SUPREME COURT OF THE UNITED STATES.

No. 182.

MICHAEL SECRIST, PLAINTIFF IN ERROR,

vs.

SILAS T. GREEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the eighth circuit and northern district of Illinois, before the judges thereof, at the city of Chicago, in the district aforesaid, on Monday, the sixth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

SILAS T. GREENE
vs.
MICHAEL SECRIST.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the eighth day of July, in the year of our Lord one thousand eight hundred and sixty-one, came said plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the
2 United States of America for the northern district of Illinois, his bond for costs in said entitled cause and his declaration in ejectment against said defendant, together with a notice and affidavit thereto attached; which said bond, declaration, notice and affidavit are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court.—July term, A. D. 1861.

SILAS T. GREEN
vs.
MICHAEL SECRIST. } In ejectment.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 8th day of July, A. D. 1861.

W. C. GOUDY.

Endorsed: Filed July 8, A. D. 1861.

WM. H. BRADLEY, *Clerk.*

3 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the nothern district of Illinois, of the July term, in the year of our Lord one thousand eight hundred and sixty-one.

Silas T. Greene, a citizen of the State of Kentucky, plaintiff, by W. C. Goudy, his attorney, come and complained of Michael Secrist, who is a citizen of the State of Illinois, defendant, who was notified by notice and copy of declaration according to the statute in a plea of ejectment.

For that whereas the said plaintiff was, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-one, possessed of a certain tract or parcel of land, with the appurtenances, situate in the county of Warren, in the State and district of Illinois, and known and described as follows, to wit: The southeast quarter of section thirty-four, (34,) in town-

ship ten (10) north, in range three (3) west, of the fourth principal meridian, in said county and State, which said tract or parcel of land exceeds
4 in value the same of five hundred dollars; which said premises the said plaintiff, Silas T. Green, claims in fee, and the said plaintiff, Silas T. Green, being so possessed thereof, the said defendant, Michael Secrist, afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-one, entered into said premises and ejected the said plaintiff, Silas T. Green, therefrom, and unjustly withhold from the said plaintiff, Silas T. Green, the possession thereof, to the damage of the said plaintiff of fifty dollars, and therefore he brings suit, &c.

W. C. GOUDY, *Attorney for Plaintiff.*

To Michael Secrist, the above-named defendant:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the circuit court of the United States for the northern district of Illinois on the first day of July, 1861, being the first day of the
5 July term, 1861, of the said court. That upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in said declaration.

Dated this third day of June, A. D. 1861.

W. C. GOUDY, *Attorney for Plaintiff.*

STATE OF ILLINOIS, *Warren County, ss:*

Personally appeared before me, on this 18th day of June, A. D. 1861, Joseph A. Boynton, who, being by me first duly sworn, saith that he did, on the 17th day of June, A. D. 1861, serve the foregoing declaration and notice upon Michael Secrist, defendant, by there, within the county of Warren aforesaid, delivering to him a a true and correct copy of the same.

J. A. BOYNTON.

6 Subscribed and sworn to before me this 18th day of June, A. D. 1861.

WM. LAFERTY,
Clerk Cir. Court, Warren Co., Ill.

Endorsed: Filed July 8, 1861.

WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the eighth day of July, in the July term of said court, A. D. 1861, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SILAS T. GREEN
vs.
MICHAEL SECRIST. } Ejectment.

Now comes the plaintiff, by W. C. Goudy, esq., his attorney, and files his declaration in ejectment against said defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant; and on his motion, it is ordered by the court that this cause be docketed and that the defendant be
7 ruled to plead within twenty days, or that his default be entered.

On this day, to wit, the twentieth day of July, A. D. 1861, came said defendant, by his attorney, and filed in said clerk's office his plea in

said entitled cause, which said plea is in the words and figures following, to wit:

Circuit court U. S., northern district of Illinois.

MICHAEL SECRIST *ads.* SILAS T. GREEN. } Ejectment.

Now comes the said defendant, by C. B. Waite, his attorney, and defends the wrong and injury, when, &c., and says he is not guilty of the said supposed trespass and ejectment in the said declaration mentioned in manner and form as therein charged, and of this he puts himself upon the country, &c.

C. B. WAITE, *Att'y for Defendant.*

Endorsed: Filed July 20th, 1861.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fourteenth day of June, in the adjourned May term, A. D. 1862, of said court, in the record of the proceedings
8 thereof in said entitled cause is the following entry, to wit:

SILAS T. GREEN *vs.* MICHAEL SECRIST. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined, by agreement they waive the intervention of a jury, and for trial put themselves upon the court; and the court, after hearing the evidence and arguments of counsel, and being fully advised in the premises, finds the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in his declaration, to wit, the southeast quarter of section thirty-four, (34,) in township ten (10) north, in range three (3) west, of the fourth principal meridian, in the county of Warren and State of Illinois; the court also finds the estate established in the plaintiff, on the trial, to be an estate in fee simple, and assesses the damages of the plaintiff to the sum of one cent; and the defendant, by his attorney, moves the court for a new trial.

On this day, to wit, the sixth day of August, in the July term of
9 said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SILAS T. GREEN *v.* MICHAEL SECRIST. } Ejectment.

The court having fully considered, and being now sufficiently advised, upon the motion of the defendant, heretofore entered by his attorney, for a new trial of this cause, overrules said motion. It is thereupon considered and adjudged by the court, that the said plaintiff have and recover of the defendant possession of the said described real estate and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent, his damages as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of twenty-nine dollars and thirty-five cents, and that he have execution therefor.

10 On this day, to wit, the nineteenth day of March, in the March adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SILAS T. GREEN
v.
MICHAEL SECRIST. } Ejectment.

Now comes the defendant, by Waite and Towne, his attorneys, and moves the court to vacate and set aside the judgment entered herein on the sixth day of August, eighteen hundred and sixty-two, and for a new trial of the same under the statute; and it appearing to the satisfaction of the court that all the taxed costs had been paid by the defendant, it is ordered by the court that said cause be re-docketed, the judgment vacated and set aside, and a new trial thereof be awarded.

On this day, to wit, the nineteenth day of May, in the adjourned May term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

11 SILAS T. GREEN
v.
MICHAEL SECRIST. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined, come a jury, of good and lawful men, to wit: T. B. Farnsworth, John D. Schlott, O. B. Ayres, J. B. Peterson, James Scott, P. B. Scarrett, Lorenzo Wood, Adam Bohn, Levi Gibson, William Fowler, John M. Brown, and M. B. Derrick, who are all duly elected, tried, and sworn to well and truly try said issue, after hearing the evidence, the argument of counsel, and the instructions of the court, return into court the following verdict: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in his declaration, as follows: the southeast quarter of section thirty-four, (34,) in township ten (10) north, in range three (3) west, of the fourth principal meridian, situate in the county of Warren and State of Illinois; and we further find the estate established in the plaintiff on trial to be an estate in fee simple, and
12 assess the damages to the sum of one cent; and thereupon the defendant moves the court for a new trial.

On this day, to wit, the sixth day of July, in the July term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SILAS T. GREEN
v.
MICHAEL SECRIST. } Ejectment.

Now comes on to be heard the motion of the defendant for a new trial; after argument, the court being fully advised, overrules the same, and awards judgment on the finding of the jury in this behalf.

It is thereupon considered by the court that the plaintiff do have and recover of the defendant possession of the real estate and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he have and recover of and from the defendant the said sum of one cent in damages, together with the costs and charges herein, amounting to the sum of thirty-three dollars and sixty cents, and that execution issue therefor.

13 On the trial of the foregoing cause the defendant took exceptions which were duly signed and sealed by the judge of said court, and are in the words and figures following, to wit:

UNITED STATES OF AMERICA:

United States circuit court for the northern district of Illinois, ——— term, A. D. 1863.

SILAS T. GREEN
vs. } ss.—Ejectment.
MICHAEL SECRIST.

Be it remembered that on the trial of the above-entitled cause the plaintiff, to maintain the issues on his part, offered to read to the jury a patent from the United States to George Tibbitts for the southeast quarter of section No. thirty-four, in township No. ten north, in range No. three west, of the fourth principal meridian; to the reading of which the defendant, by his attorney, made no objections, and the same was then and there read to the jury.

Be it further remembered that on said trial the plaintiff, further to maintain his said issues on his part, offered to read in evidence to the jury a deed from George Tibbitts to William James for the same land,
14 bearing date on the 3rd day of March, A. D. 1818, in words and figures following:

Know all men by these presents that I, George Tibbitts, of the city of Albany, in the county of Albany, in the State of New York, for and in consideration of the full sum of seventy-two $\frac{50}{100}$ dollars, current money of the United States, to me truly paid on and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey and confirm unto William James, of the city of Albany, in the county of Albany, his heirs and assigns forever, one hundred and sixty acres of land, which quantity of land is more fully described in the patent registered in volume sixteen, page four hundred and sixty, of the records of the General Land Office of the United States, and delivered to me by Josiah Meigs, esquire, Commissioner of the General Land Office, a true copy of which is hereinafter contained, viz:

James Monroe, President of the United States of America, to all to whom these presents shall come, greeting:

15 Know ye that, in pursuance of the acts of Congress appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812, George Tibbitts having deposited in the General Land Office a warrant in his favor, numbered 11,991, there is granted unto the said George Tibbitts, late a private in Lytle's company, fourth regiment infantry, a certain tract of land containing one hundred and sixty acres, being the southeast q'r of section thirty-four, of township ten north, in range three west, in the tract appropriated (by the acts aforesaid) for military bounties in the territory of Illinois. To have and to hold the said quarter section of land, with the appurtenances thereof, unto the said George Tibbitts, and to his heirs and assigns forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the fourth day of February, in the year of our Lord one thousand eight hundred and eighteen, and of the independence of the United States of America the forty-second.

By the President: JAMES MONROE.

[SEAL.] JOSIAH MEIGS,
Commissioner of the General Land Office.

16 And the reversion and reversions, remainder and remainders, rents, issues and profits of the aforesaid tract of land, and of every part thereof, and all my right, title, interest, claim, and demand of whatever

nature, of, to, and in the aforesaid one hundred and sixty acres of land, and any part and parcel thereof, in and by virtue of the aforesaid patent or otherwise: to have and to hold all the aforesaid described tract of land, and every part and parcel thereof, with all the appurtenances and privileges thereunto belonging, to him, the said William James, his heirs and assigns, for his and their own proper use, benefit, and behoof forever, and to and for no other use, intent, or purpose whatever. And I, the said George Tibbitts, for myself, my heirs, executors and administrators, do covenant, promise and agree to and with the said William James, his heirs and assigns, that I am now the true, lawful and rightful owner of all and singular the above-mentioned land, by virtue of the aforesaid recited patent; and also that he, the said William James, his heirs and assigns, shall and may, at all times forever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy
17 all and singular the land hereby bargained, sold, transferred and assigned, without the lawful let, suit, trouble, hindrance, molestation, interruption, eviction or disturbance of me, the said George Tibbitts, my heirs or assigns, or any other person or persons whatsoever; and that I and my heirs, and all and every person or persons, and his and their heirs, lawfully claiming any estate, right, title or interest of, in, and to the said land herein described, by, from and under me, them or any of them, shall and will, from time to time, and at all times hereafter, upon the request and at the proper costs and charges in the law, of the said William James, his heirs or assigns, make, do sign, seal and execute, or cause or procure to be made, done, signed, sealed and executed, all and every further and lawful act or acts, thing or things, device or devices, conveyance or conveyances, assurance or assurances, in the law whatsoever, for the further, better and more perfect granting, conveying, releasing, confirming, and assuring the premises aforesaid, unto the said William James, heirs and assigns, and to his and their proper use and behoof forever, according to the true intent and meaning of these presents, and to and for no other use, intent or pur-
18 pose whatsoever; and I do hereby authorize and irrevocably empower the said William James, his heirs and assigns, to take possession of the aforesaid described tract of land, either in my name, or his or their name or names, as may be deemed best calculated to secure unto him or them forever the peaceable enjoyment thereof. And lastly, do appoint Nathaniel Pope, esquire, secretary of the Territory of Illinois, my lawful attorney, to make for me and in my name any further acknowledgment of this instrument of writing which may be deemed necessary in strict compliance with the laws of the said Territory of Illinois.

In witness of all the foregoing, I have hereunto affixed my hand and seal, at the city of Albany, in the county of Albany and State of New York, this third day of March, one thousand eight hundred and eighteen.

GEORGE TIBBITTS. [SEAL.]

Signed, sealed, and delivered in presence of—
ZACHARIAH GALUSHA.
GIDEON HAWLEY.

I, George Tibbitts, do declare, upon oath, that I am the same person
19 intended and named in the above deed, dated the third day of March, 1818, and more particularly in the patent therein recited at length; and further, that I was duly placed in possession of the patent for the land conveyed in the above deed by receiving the same, Josiah Meigs, Commissioner of the General Land Office.

GEORGE TIBBITTS.

Sworn and subscribed before me this 3 day of March, 1818.
GIDEON HAWLEY, *Master in Chanc'y.*

Received, this third day of March, 1818, from William James, the sum of seventy-two $\frac{50}{100}$ dollars, being the consideration money expressed in the above deed. GEORGE TIBBITS.

Witness: ZACHARIAH GALUSHEY.
GIDEON HAWLEY.

STATE OF NEW YORK, *ss:*

Be it remembered that, on the day of the date of the within deed, personally came before me the within-named George Tibbits, and acknowledged before me that he had executed the within deed freely, for the uses and purposes therein mentioned, and consented that the same might be re-
20 corded where necessary; and further, that Zachariah Galusha, to me personally known, a subscribing witness to the execution of this deed, having been duly sworn, made oath before me that he knew the said George Tibbitts to be the same person described in and who executed the said deed, and that he was a subscribing witness to the execution thereof; all which being satisfactory to me, the said deed may therefore be recorded.

GIDEON HAWLEY, *Master in Chanc'y.*

ILLINOIS TERRITORY, *Madison County, ss:*

I certify the within deed and certificates to be duly recorded and examined in my office, in book I, page 211, &c., this 21st day of Sept., 1818.

JAMES RANETTE, *Re'd'r, M. C.*

To the reading of which, the defendant, by his attorneys, then and there objected to the introduction of said, because said deed was not made and acknowledged according to law, and because the execution of said deed was not proved, and because the acknowledgment was made before
21 an officer not authorized to take the acknowledgments of deeds of land situate in the State of Illinois, nor was there any proof of official character of the master in chancery acknowledging said deed; which objection was by the court then and there overruled, and said deed was then and there read in evidence to said jury. To the reading of which, and to the overruling of said objections, the defendant then and there, by his attorneys, excepted.

Be it further remembered that on the trial of said cause the plaintiff, by his attorney, offered to read in evidence to the jury an exemplification of a record of the circuit court of the county of Pike and State of Illinois, in partition, in regard to the above-described land, which exemplification is in words and figures following, to wit:

In chancery.—Pike county circuit court—In September term, A. D. 1843.

JOHN B. JAMES and MARY ELLEN JAMES, complainants,
vs.
22 CATHARINE JAMES, widow of William James, formerly of the city of Albany, in the State of New York, deceased; WILLIAM H. BAKER, AUGUSTUS JAMES, ELIZABETH JAMES, WILLIAM JAMES, MARCIA JAMES, HENRY JAMES, MARY W. JAMES, MARY ANN KING, SMITH T. VAN BUREN, ELLEN KING VAN BUREN, EDWARD JAMES, ROBERT E. TEMPLE, by Gideon Hawley, then trustee; HOWARD JAMES, by Gideon Hawley, his guardian; HENRY MASON, LYDIA L. MASON, and ROBERT W. JAMES, devisees and heirs of said deceased, respondents. } Bill for partition.

This day came the complainants, by their solicitor, and it appearing to the court that Ellen King Van Buren, and Howard James, are infants, the

court orders that John Pearson be appointed guardain *ad litem* for said infants; and the cause now coming on to be heard, and it appearing satisfactory to the court that due legal notice had been given to all the defendants in this suit of the pendency of the same, by publication in the "Illinoin," a public newspaper printed in Jacksonville, in the county of Morgan and State of
23 Illinois, four weeks successively, commencing on the first day of July, A. D. 1843, and ending on the 5th day of August, A. D. 1843; and the guardian *ad litem* of the infant defendants having filed his answer, setting up no opposition to the granting of the prayer of said bill, and all the other defendants, although three times solemnly called, coming not, but making default, and summons having issued, in pursuance to law, for all the defendants in this suit, and there being no opposition to the prayer of the bill, it is ordered, that the said bill be taken for confessed; and the case being now brought on to be heard, the court now here is satisfactorily advised that the interest of the parties named is respectively as follows—that is to say, the interest of John B. James is six and one-eleventh parts of all the lands and tenements in said bill mentioned, which lands and tenements are described as follows:

Adams county: The NW. qr. 12, 2 s., 5 w.; SE. 19, 2 s., 5 w.; NW. 22, 3 s., 5 w.; NW. 17, 1 s., 7 w.; NW. 15, 2 s., 7 w.; SE. 5, 3 s., 7 w.

Hancock: SW. 20, 3 n., 5 w.; SE. qr. 8, 5 n., 6 w.; SW. 8, 5 n., 6 w.; SE. 9, 6 n., 6 w.; SW. 9, 6 n., 6 w.

Adams co.: SW. 32, 3 s., 7 w.; SE. 32, 2 n., 6 w.; SW. 8, 2 n., 7 w.;
24 SE. 13, 3 n., 6 w.; NE. 17, 2 w., 7 w.; NE. 20, 1 n., 8 w.; NW. 20, 1 n., 8 w.; SE. 28, 1 n., 8 w.; NE. 26, 2 n., 8 w.; NW. 26, 2 n., 8 w.; NE 35, 2 n., 9 w.

Berrian co.: NE. 25, 15 n., 6 e.

Calhoun co.: SW. 4, 10 s., 2 w.; NE. 18, 10 s., 2 w.; NW. 20, 10 s., 2 w.; SW. 13, 13 s., 2 w.; SE. 33, 8 s., 3 w.; NW. 1, 9 s., 3 w.

Fulton co.: SE. 14, 3 n., 1 e; SW. 5, 7 n., 1 e.; SW. 26, 8 n., 1 e.; NW. 34, 4 n., 2 e.; SW. 34, 4 n., 2 e.; SW. 7, 3 n., 3 e.; SE. 24, 5 n., 3 e.; NE. 34, 6 n., 4 e.; NE. 28, 7 n., 4 e.; SW. 24, 8 n., 4 e.; SW. 17, 7 n., 5 e.

Peoria co.: SW. 20, 9 n., 5 e.; NW. 6, 6 n., 6 e.; NE. 20, 10 n., 6 e.; NW. 14, 2 n., 7 w.; NW. 21, 7 e.; SE. 10, 9 n., 7 e.; SE. 28, 10 n., 7 e.; NW. 33, 10 n., 7 e., NE. 30, 11 n., 7 e.; SW. 31, 9 n., 8 e.; SE. 29, 10 n., 8 e.; SE. 19, 11 n., 8 e,

Hancock co.: SW. 18, 6 n., 6 w.; SE. 8, 7 n., 6 w.; NW. 14, 7 n., 6 w.; SE. 15, 7 n., 6 w.; NW. 23, 3 n., 7 w.; NE. 35, 3 n., 7 w.; SW. 23, 4 n., 7 w.; NW. 33, 3 n., 8 w.; NW. 22, 6 n., 8 w.; SE. 25, 4 n., 9 w.; NW. 20, 10 n., 1 e.

Knox co.: SE. 21, 12 n., 1 e.; NW. 33, 13 n., 1 e.; NE. 28, 9 n., 2 e.; NW. 33, 9 n., 3 e.; NW. 27, 10 n., 3 e.; SE 27, 9 n., 3 n., 4 e.; SW. 17, 10 n.,
25 4 e.; SW. 20, 10 n., 4 e.; SE. 11, 13 n., 5 e.; SE. 23, 13 n., 1 e.

McDonough co.: NE. 10, 4 n., 1 w.; SW. 11, 5 n., 1 w.; SE. 27, 5 n., 1 w.; NE. 9, 7 n., 1 w.; NW. 9, 7 n., 1 w.; NE. 33, 7 n., 1 w.; SE. 4, 4 n., 2 w.; SE. 8, 4 n., 2 w.; SW. 8, 4 n., 2 w; SE. 14, 4 n., 2 w.; SE. 24, 4 n., 2 w.; SW. 27, 4 n., 2 w; NE. 6, 5 n., 2 w.; NW. 1, 6 n., 2 w.; SE. 10, 7 n., 2 w.; NW. 36, 7 n., 2 w.; SW. 10, 7 n., 2 w.; NE. 32, 4 n., 3 w.; NW. 23, 6 n., 3 w.; NE. 11, 7 n., 3 w.; NW. 22, 7 n., 3 w.; SW. 11, 4 n., 4 w.; SE. 3, 6 n., 4 w.; SW. 3, 6 n., 4 w.; NW. 13, 6 n., 4 w.; NW. 8, 7 n., 4 w.; NW. qr. 3, 9 n., 4 w.; SE. 4, 11 n., 4 w.; SW. qr. 17, 7 n., 4 w.

Mercer co.: SW. 9, 13 n., 3 w.; SW. 33, 13 n., 3 w.; NE. 11, 14 n., 4 w.; SW. 35, 14 n., 4 w.; SE. 1, 15 n., 4 w.; NW. 11, 14 n., 4 w.

Warren co.: NW. 22, 8 n, 1 w.; NW. 19, 9 n., 1 w.; NE. 26, 9 n., 1 w.; NW. 26, 9 n, 1 w.; NE. 33, 9 n., 1 w.; SW. 36, 9 n., 1 w.; SW. 2, 10 n., 1 w.; NE. 30, 10 n., 1 w.; NE. 11, 11 n., 1 w.; NW. 11, 11 n., 1 w.; SW. 5, 12 n., 1 w.; NE. 9, 12 n., 1 w.; SW. 28, 8 n., 2 w.; NE. 12, 11 n., 2 w.; SW. 17,

11 n., 2 w.; SE. 34, 8 n., 3 w.; NE. 26, 9 n., 3 w., SE. 34, 10 n, 3 w.; NW. 12, 11 n., 3 w.; SE. 33, 8 n., 4 w.; SE. 20, 5 s., 6 w.; SE. 36, 6 s., 6 w.;
26 NE. 11, 11 n., 4 w.; NW. 36, 11 n., 4 w.; SE. 2, 12 n., 4 w.; SW. 2, 12 n., 4 w.

Pike co.: NW. 26, 5 s., 3 w.; NE. 31, 5 s., 3 w.; SE. 3, 6 s., 3 w.; SE. 26, 6 s., 3 w.; NE. 23, 7 s., 3 w.; NW. 23, 7 s., 3 w.; NW 2, 3 s., 4 ; SW. 8, 3 s., 4 w.; SE. 28, 3 s., 4 w.; SW. 28, 3 s., 4 w.; SE. 33, 6 s., 4 w.; NE. 8, 4 s., 5 w.; SE. 36, 4 s., 5 w ; SW. 4, 6 s., 5 w.; SE. 5, 6 s., 5 w.; SW. 20, 6 s., 5 w.; NE. 22, 7 s., 5 w.; SE. 22, 4 s., 6 w.; SE. 26, 4 s., 6 w.; SE. 12, 7 s., 6 w.; SE. 34 4 s., 6 w.

Putnam: NE. 31, 12 n., 7 e.; SW. 3, 13 n., 7 e.; SW. 15, 13 n., 7 e.; SE. 5, 12 n., 8 e.; SE. 11, 12 n., 8 e.; SW. 27, 13 n., 8 e.; NW. 28, 13 n., 8 e.; NE. 12, 12 n., 6 e.; SE. 19, 18 n., 6 e.; SE. 4, 12 n., 7 e.

Scuyler co.: NW. 20, 1 s., 1 w.; NW. 8, 3 n., 1 w.; NE. 22, 1 n., 2 w.; SW. 23, 1 n., 2 w.; NE. 7, 2 n., 2 w.; NW. 20, 2 n., 2 w.; SE. 28, 2 n., 2 w.; SW. 13, 3 n., 2 w.; NE. 17, 3 n., 2 w.; SE. 28, 3 n., 2 w.; NE. 4, 2 n., 1 e.

That the interest of Mary Ann King in all the said lands and tenements is one-eleventh part; that the interest of Howard James in the same is one-eleventh part; that the interest of Henry Mason and Lydia L. Mason,
27 in the right of said Lydia L. Mason, is one twenty-second part; the interest of Robert W. James in the same is one twenty-second part; that the interest of Ellen King Van Buren (wife of Smith T. Van Buren) is one-eleventh part; and the interest of Catharine M. Temple, (wife of Robert E. Temple,) Gideon Hawley, esq., their trustee, is one-eleventh part in and to all the lands and tenements aforesaid. It is now, therefore, ordered and adjudged by the court that all the said lands and tenements be divided and set off to the aforesaid persons entitled thereto according to and in the proportions above mentioned, and that that part to be allotted to said Catharine M. Temple be held by Gideon Hawley, esq., her trustee aforesaid, under the deed of trust in said bill set forth, without the least prejudice, however, to any of the legal or equitable rights of the said Catharine M. and Robert E. Temple; and Robert Davis, Peter K. Stringham, and Stephen R. Gray are hereby appointed commissioners to make partition of all the said lands and tenements, and to assign to each of said persons entitled thereto his or her share (according as their interest as above respectively set forth) by
28 metes and bounds, having due regard to the value of the same, and shall make report of their proceedings, under their hands and seals, to the next term of this court for approval; and the cause is continued.

Pike county circuit court, Ill's, April term, A. D. 1844.—In chancery.

JOHN R. JAMES and MARY ELLEN JAMES *vs.* CATHARINE JAMES, widow of William James, deceased; William H. Baker, Augustus James, Elizabeth James, William James, Maria James, Henry James, Mary James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, Catharine M. Temple, by Gideon Hawley, their trustee; Howard James, by Gideon Hawley, his guardian; Henry Mason, Lydia L. Mason, and Robert W. James.	Petition for partition.

This day came Dusenberry, the solicitor for the complainants in the above-entitled cause, and suggests the death of Robert Davis, one of the commissioners heretofore appointed by the court in the above-entitled
29 cause, and upon such suggestion moves the court to appoint George K. Watson, of Pike county, as such commissioner. Whereupon it is

ordered by the court that said Watson be appointed as such commissioner, with full power to act under the order for partition heretofore entered in this cause, instead of the said Davis, deceased.

Pike county circuit court, Ill's, September term, A. D. 1844.—In chancery.

JOHN B. JAMES and MARY ELLEN JAMES
vs.
CATHARINE JAMES and others. } Bill for partition.

This day came Dusenberry, the counsel for the complainants herein, and having stated to the court that the commissioners had not quite finished their partition, it is on his motion ordered by the court that the said commissioners be permitted to file their report during vacation, having first had the same approved by the presiding judge, and that the same, when so filed and approved, be accepted, and recorded as proceedings of the present term of the court

30 JOHN B. JAMES and MARY ELLEN JAMES
vs.
CATHARINE JAMES, widow of William James, formerly of the city of Albany, in the State of New York, deceased; William H. Baker, Augustus James, Elizabeth James, William James, Maria James, Henry James, Mary W. James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, and Catharine M. Temple, by Gideon Hawley, their trustee; Howard James, by Gideon Hawley, his guardian; Henry Mason, Lydia L. Mason, and Robert W. James, divisees and heirs of said deceased, respondents. } Bill for partition.

On this 30th day of November, A. D. 1844, in vacation, and in compliance with the order entered into in this suit at the last September term of the court, came the commissioners heretofore appointed to divide the lands in complainants' bill, set forth and filed their report in the words and figures following, to wit:

The report of Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners named in the annexed order, and having been heretofore duly appointed the commissioners by the Pike county
31 circuit court to divide certain lands in the State of Illinois belonging to the estate of William James, deceased, among the heirs of said deceased, we, Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners above named, now come and submit to the honorable circuit court of Pike county, in the State of Illinois, the following report, fully showing our action as commissioners in compliance with our directions in the annexed order of partition, contained in the words and figures following, to wit:

Having first duly qualified ourselves as such commissioners by taking the oath required of us by the statute in such case made and provided, (as will fully appear from reference to the affidavit hereto annexed,) we entered upon all the said land in person set forth in said order of partition and hereinafter fully described, and examined all the said land, and appraised each tract or parcel of land separately by itself; and having done this, and being satisfied that all the said lands were susceptible of division, without prejudice or injury to any of the owners thereof, we proceed to divide the said lands, according to the directions contained in said order, into eleven
32 different shares or equal portions, dividing the same according to the value thereof, an accurate description of which divisions and valua-

tion is hereto annexed, marked "A," and referred to as part of our report.

We assigned, allotted, and set apart the following shares, to wit: share number three, containing the following lands, to wit:

NW. qr. 15, 2 s., 7 w.; SE. 33, 8 s., 3 w; SE. 14, 3 n., 1 e; SW. 23, 4 n., 7 w.; NW. 20, 10 n., 1 e.; NW. 27, 10 n., 3 e.; NW. 28, 13 n., 8 e.; SW. 9, 13 n., 3 w.; SE. 4, 4 n., 2 w.; NE. 11, 7 n., 3 w.; SE. 10, 9 n., 7 e.; NW. 2, 3 s., 4 w.; SE. 36, 6 s., 6 w.; SW. qr. 11, 5 n., 1 w., NE. 20, 10 n., 6 e.; SE. 5, 6 s., 5 w.; NE. 30, 10 n , 1 w.; NE. 25, 15 n., 6 e.; SE. 9, 6 n., 6 w.; NW. 1, 6 n., 2 w.; NE. 8, 4 s., 5 w.; NE. 22, 1 n., 2 w.; SE. 28, 2 n., 2 w.; NE. 31, 12 n., 7 e.; NW. 11, 11 n., 1 w.; NE. 11, 11 n., 1 w.; SE. 4, 11 n., 4 w.; also share to John B. James, number six, SW. 26, 8 n. 1 e.; NW. 33, 13 n., 1 e.; NE. 32, 4 n., 3 w.; SW. 4, 6 s., 5 w.; SW. 15, 13 n., 7 e.; NE. 35, 2 n., 9 w.; SE. 13, 3 n., 6 w.; NW. 26, 9 n., 1 w.; NW. 3, 9 n., 4 w.; also share to John B. James, number seven, NW. 17, 1 s., 7 w ; SW. 17, 7 n., 5 e.; NW. 23, 6 n., 3 w.; NE. 07, 2 n., 2 w.; SE. 34, 10 n., 3 w.; SW. 8, 2 n., 7 w.; SW.
33 28, 8 n., 2 w.; also share to John B. James, number four, SW. 32, 3 s., 7 w.; SW. 4, 10 s., 2 e.; SW. 34, 8 n., 4 e.; NW. 22, 6 n., 8 w ; SE. 23, 13 n., 1 e.; SW. 17, 10 n., 4 e.; SE. 11, 12 n., 8 e.; NE. 11, 14 n., 4 w.; SE. 9, 7 n., 1 w.; SW. 27, 4 n., 2 w.; SW. 20, 9 n , 5 e.; SE. 26, 6 s., 3 w.; SE. 34, 4 s., 6 w.; NW. 8, 3 n., 1 w.; NE. 12, 12 n., 6 e.; NW. 19, 9 n., 1 w.; SE. 28, 1 n., 8 w.; SW. 20, 3 n., 5 w.; SE. 14, 4 n., 2 w.; SE. 28, 10 n., 7 e.; NE. 12, 11 n., 2 w.; also share number eleven, to John B. James, SE. 25, 4 n., 9 w.; SW. 3, 6 n., 4 w.; SW. 31, 9 n., 8 e.; SW. 5, 12 n., 1 w.; NW. 14, 2 n., 7 w.; SW. 9, 6 n., 6 w.; SE. 27, 10 n., 8 e.; SW. 17, 11 n., 2 w.; NE. 26, 2 n., 8 w.; NW. 33, 3 n., 8 w.; NE. 31, 3 s., 3 w ; NE. 26, 9 n., 3 w.; also to John B. James, share number nine, SW. 13, 13 s., 2 w.; SW. 18, 6 n., 6 w.; SW. 11, 4 n., 4 w.; SW. 28, 3 s., 4 w.; NE. 11, 11 n., 4 w.; SE. 19, 2 s , 5 w.; SW. 34, 4 n., 2 e.; SE. 27, 9 n., 4 e.; SE. 3, 6 n., 4 w.; NW. 20, 2 n. 2 w.; SW. 23, 1 n., 2 w.; NE. 20, 1 n., 8 w.; SE. 8, 7 n., 6 w.; SW. 35, 14 n., 4 w.; NW. 20, 5 s , 3 w.; SE. 4, 12 n., 7 e.; NW. 1, 9 s., 3 w.; NE. 28, 9 n., 2 e.; SW.
34 8, 4 n., 2 w.; NE. 22, 7 s., 5 w.; NW. 22, 8 n., 1 w.; SE. 24, 4 n., 2 w.; NW. 13, 6 n., 4 w.; SE. 22, 4 s., 6 w.; SE. 33, 8 n., 4 w.; SE. 32, 2 n., 6 w.; SW. 7, 3 n., 3 e.; SE. 10, 7 n., 2 w.; SW. 17, 7 n., 4 w.; NW. 20, 1 s., 1 w.; SE. 2, 12 n., 4 w.; also share number one to Catharine M. Temple, containing the following lands, to wit: NW. 12, 2 s., 5 w.; SE. 24, 5 n., 3 e.; SE. 5, 12 n., 8 e.; NW. 21, 7 n., 7 e.; SE. 1, 15 n., 4 w.; NW. 36, 7 n., 2 w.; NW. 23, 7 s. 3 w.; SW. 3, 13 n., 7 e.; also share number eight, to Mary Ellen King, containing the following lands, to wit: SE. 5, 3 s., 7 w.; SW. 8, 5 n., 6 w.; NW. 11, 14 n., 4 w.; SE. 19, 11 n., 8 e.; SE. 28, 3 n., 2 w.; also share number five, to Howard James, containing the following lands, to wit: NW. 22, 3 s., 5 w.; SE. 8, 5 n., 6 w.; SW. 9, 7 n., 1 w.; NW. 33, 10 n., 7 e.; SE. 26, 4 s., 6 w.; SW. 36, 9 n., 1 w.; SW. 2, 10 n., 1 w.; SE. 18, 10, s. 2 w.; NW. 33, 9 n., 3 e.; NE. 33, 7 n., 1 w.; NE. 23, 7 s. 3 w.; SW. 13, 3 n., 2 w.; SW. 2, 10 n., 1 w.; NE. 28, 7 n. 4 e.; NW. 8, 9 n., 4 w.; SW. 8. 3 s., 4 w.; NE. 17, 3 n., 2 w.; NE. 9, 12 n., 1 w.; NW. 20, 10 s., 2 w.; NW. 23, 3 n., 7 w.; SW. 10, 7 n., 2 w.; SE. 28, 3 s., 4 w.; NE. 26, 9 n., 1 w.; NW. 12,
35 11 n., 3 w.; SW. 5, 7 n., 1 e.; NW. 22, 7 n., 3 w.; SW. 2, 12 n., 4 w.; NE, 17, 2 n., 7 w.; NW. 14, 7 n., 6 w.; SE. 8, 4 n., 2 w.; SW. 20, 6 s., 5 w.; SE. 11, 13 n , 5 e.; NW. 34, 4 n., 2 e.; SW. 30, 10 n., 4 e.; NE. 6, 5 n., 2 w.; SE. 12, 7 s., 6 w.; NW. 36, 11 n., 4 w.; also share number ten, to Ellen King Van Buren, containing the following lands, to wit: NW. 26, 2 n., 8 w.; SE. 15, 9 n., 6 w.; NW. 6, 6 n., 6 e.; SE. 33, 6 s., 4 w.; NE. 33, 9 n., 1 w.; also one equal half of share number second, to Lydia L. Mason, containing the following lands, to wit: NE. 34, 6 n., 4 e.; NE. 30, 11 n., 7 e.; SE. 29, 5 n., 1 w.; SW., 27, 13 n., 8 e.; SE. 20, 5 s., 6 w.; SE. 21, 12 n., 1 e.; SE. 19, 13 n., 6 e.; SE. 36, 4 s., 5 w.

Also one equal half of the share number second, to Robert W. James, containing the following lands to wit:

NW. 20, 1 n., 8 w.; NE. 10, 4 n., 1 w.; NE. 35, 3 n., 7 w.; NE. 4, 2 n., 1 e.; SW. 33, 13 n., 3 w.; SE. 34, 8 n., 4 w.

As Lydia L. Mason's share amounts in value to five dollars more than Robert W. James's share, we do report that the said Lydia L. Mason pay the said Robert W. James five dollars out of her share. As share
36 number eleven amounts to thirty dollars more than the other share, we do report that John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the shares. We do also report that, at the suggestion of the counsel of the parties in this suit, we exclude from the division the southeast quarter of section three, six south, three west, the title to this piece being in controversy. We, however, value the piece of land last mentioned at one thousand dollars.

All of which allotments and divisions we deem fair and equitable and having fully complied with the requisitions contained in the order of this honorable court, we ask to be discharged. All of which is respectfully submitted by your commissioners.

P. K. STRINGHAM, [SEAL.]
S. R. GRAY, [SEAL.]
GEORGE K. WATSON, [SEAL.]
Commissioners.

PIKE COUNTY, ILLINOIS, *November 26th*, 1844.

Which report, being examined and considered, is approved by the court; and the cause being finally and fully heard upon the bill, answers, exhibits, and report of the court being sufficiently advised of and concerning
37 the premises, doth order and decree, and enter of record as follows, to wit: That Catharine James, widow of William James, deceased, having, previously to the commencement of this suit, fully relinquished all of her right of dower in all the said lands and tenements and premises described in the complainants' bill herein filed, be, and hereby is, forever debarred of and from all right of dower in the same. It is further ordered and adjudged by the court, and hereby entered of record, that, in accordance with the said report, John B. James receive and hold the following shares allotted to him by the commissioners, to wit: shares number three, four, six, seven, nine and eleven, and all the lands in these shares so allotted to him contained.

It is further ordered and adjudged by the court, and hereby entered of record, that Catharine M. Temple receive (to be held in trust, without prejudice to any of the legal or equitable rights of the said Catharine M., or of any other person, by Gideon Hawley, esq., by virtue of the deed of trust executed to him herein filed,) share number one, allotted to her by the commissioners, and all the lands therein contained. It is further ordered
38 and adjudged by the court, and is hereby entered of record, that Howard James receive share number five, allotted to him by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record, that Mary Ann King receive share number eight, allotted to her by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and it is hereby entered of record, that Ellen King Van Buren receive share number ten, allotted to her by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and hereby entered of record, that Lydia L. Mason receive the equal one-half of share number two, allotted to her by the commissioners, and all the lands contained in this half so assigned to her. It is further ordered and adjudged by the court, and is hereby entered of record, that Robert W. James receive

the other one equal half of share number two, as assigned to him by the commissioners, and all the lands contained in this half of share number two.

39 It is further ordered and adjudged by the court, that as Lydia L. Mason's half share of said lot number two amounts in value to five dollars more than the half-share assigned to said Robert W. James, the said Lydia L. Mason pay to said Robert W. James two dollars and fifty cents out of her share; and that as share number eleven amounts to thirty dollars more than the other shares, that John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the other shares. It is further ordered, adjudged and decreed by the court, and the same is hereby entered of record, that the assignments, allotments and partition made by the commissioners, as reported by them, between the parties, be, and hereby are, ratified and confirmed, and that all the parties herein shall be bound and concluded by the same; and that the estate assigned and allotted to each shall be held by the persons to whom the same is allotted in severalty, according to the division made of the same, each respectively to hold the estate assigned and allotted them in fee simple, and in lieu of all the respective

40 rights and interest which they respectively, immediately previous to this partition, enjoyed in common in all the said lands and premises. It is further ordered and adjudged by the court that the parties to whom the said allotments have been made pay the costs, charges and expenses of the suit in the following proportions, to wit: that said John B. James pay the six-eleventh parts thereof; that Catharine M. Temple pay one-eleventh part thereof; that Howard James pay one-eleventh part thereof; that Mary Ann King pay the one-eleventh part thereof; that Ellen King Van Buren pay the one-eleventh part thereof; that Lydia L. Mason pay one-twenty-second part thereof; and that Robert W. James pay one-twenty-second part of all the costs charges and expenses of this suit.

Petition for partition.

Pike county circuit court, Ill's, September term, A. D. 1845.

JOHN B. JAMES and wife
against
CATHARINE JAMES and others. } In chancery.

41 This day came the complainants, by their solicitor, and enter a motion to amend the record herein.

JOHN B. JAMES and MARY ELLEN JAMES
against
CATHARINE JAMES, widow of William James, formerly of the city of Albany, in the State of New York, deceased; William H. Baker, Augustus James, Elizabeth James, William James, Marcia James, Henry James, Mary W. James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E Temple, and Catharine M. Temple, by Gideon Hawley, their trustee; Howard James, by Gideon Hawley, his guardian; Henry Mason, Lydia L. Mason, and Robert W. James, devisees and heirs of said deceased. } Bill for partition.

It being suggested to the court that it was doubtful whether the former orders of this court, allowing the commissioners to present their report to the judge in vacation, and his approval thereof, also in vacation, were regular, the court orders that this cause be reinstated on the docket; and

42 the report of the commissioners being now produced and filed in open court in the words and figures following, to wit:

The report of Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners named in the annexed order, and having been heretofore duly appointed the commissioners by the Pike county circuit court to divide certain lands in the State of Illinois, belonging to the estate of William James, deceased, among the heirs of said deceased, we, Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners above named, now come and submit to the honorable circuit court of Pike county, in the State of Illinois, the following report, fully showing our action, as commissioners, in compliance with our direction in the annexed order of partition, contained in the words and figures following, to wit:

Having first duly qualified ourselves as such commissioners by taking the oath required of us by the statute in such case made and provided, (as will fully appear from reference to the affidavit herewith filed,) we entered upon all the said lands in person set forth in said order of partition, and
43 hereinafter fully described, and examined all the said lands, and appraised the value of each tract or parcel of land separately by itself; and having done this, and being satisfied that all the said lands were susceptible of division without prejudice or injury to any of the owners thereof, we proceeded to divide the said lands, according to the directions contained in said order, into eleven different shares or equal partitions, dividing the same according to the value thereof; an accurate description of which divisions and valuation is hereto annexed, marked schedule "A," and referred to as part of our report.

We assigned, allotted and apportioned out the said lands to each, as follows, to wit: To John B. James, in lieu of all his rights and estate in all the said lands and premises, we assigned, allotted and set apart the following shares, to wit: share number three, containing the following lands, to wit:

Northwest quarter of fifteen town., 2 s., 7 w.; SE. 33, 8 s., 3 w.; SE. 14, 3 n., 1 e.; SW. 23, 4 n., 7 w.; NW. 20, 10 n., 1 e.; NE. 11, 7 n., 3 w.; SE. 10, 9 n., 7 e.; NW. 2, 3 s., 4 w.; SE. 36, 6 s., 6 w.; SE. 28, 2 n., 2 w.;
44 NW. 27, 10 n., 3 e.; NW. 28, 13 n., 8 e.; SW. 9, 13 n., 3 e.; SE. 4, 4 n., 2 w.; also share to John B. James, number five, SW. 32, 3 s., 7 w.; SW. 4, 10 s., 2 w.; SW. 34, 8 n., 4 e.; NW. 22, 6 n., 8 w.; SE. 23, 13 n., 1 e.; SW. 17, 10 n., 4 e.; SE. 11, 12 n., 8 e.; NE. 11., 14 n., 4 w.; SE. 9, 7 n., 1 w.; SW. 27, 4 n., 2 e.; SW. 20, 9 n., 5 e.; SE. 26, 6 s., 3 w.; SE. 34, 4 s. 6 w.; NW. 8, 3 n., 1 w.; NE. 12, 12 n., 6 e.; NW. 19, 9 n., 1 w.; NW. 26, 9 n., 1 w.; NW. 3, 9 n., 4 w.; also share to John B. James, No. six, NE. 35, 2 n., 9 w.; NE. 25, 15 n., 6 e.; SW. 26, 8 n., 1 e.; SE. 13, 3 n., 6 w.; SE. 9, 6 n., 6 w.; NW. 33, 13 n., 1 e.; NE. 31, 12 n., 7 e.; NW. 11, 11 n., 1 w.; NE. 11, 11 n., 1 w.; SE. 4, 11 n., 4 w.; NE. 20, 10 n., 6 e.; NE. 8, 4 s., 5 w.; SW. 4, 6 s., 5 w.; SE. 5, 6 s., 5 w.; NE. 22, 1 n., 2 w.; SW. 15, 13 n., 7 e.; NE. 30, 10 n., 1 w.; SW. 28, 8 n., 2 w.; also share to John B. James, number 7, NW. 17, 1 s., 7 w.; SW. 17, 7 n., 5 e.; NW. 23, 6 n., 3 w.; NE. 7, 2 n., 2 w.; SE. 34, 10 n., 3 w.; SW. 8, 2 n., 7 w.; SW. 9, 6 n., 6 w.; SE. 27, 10 n., 8 e.; SW. 17, 11 n., 2 w.; NE. 26, 2 n., 8 w.; NW. 33, 3 n., 8 w.; NE. 31, 5 s., 3 w.; NE. 26, 9 n., 3 w.; also, to John B. James share No. 9, SW. 13, 13 s., 2 w.; SW.
45 18, 6 n., 6 w.; SW. 11, 5 n., 1 w.; NW. 01, 6 n., 2 w.; NE. 32, 4 n., 3 w.; SE. 19, 2 s., 5 w.; SW. 34, 4 n., 2 e.; SE. 27, 9 n., 4 e.; SE. 3, 6 n., 4 w.; NW. 20, 2 n., 2 w.; SE. 28, 1 n., 8 w.; SW. 20, 3 n., 5 w.; SE. 14, 4 n., 2 w.; SE. 28, 10 n., 7 e.; NE. 12, 11 n., 2 w.; also share number 11 to John B. James, SE. 25, 4 n., 9 w.; SW. 3, 6 n., 4 w.; SW. 31, 9 n., 8 e.; SW. 5, 12 n., 1 w.; NW. 14, 2 n., 7 w.; SE. 24, 4 n., 2 w.; NW. 13, 6 n., 4 w.; SE. 22, 4 s., 6 w.; SE. 33, 8 n., 4 w.; SE. 32, 2 n., 6 w.; SW. 7, 3 n., 3 e.; SE. 10, 7 n., 2 w.; SW. 17, 7 n., 4 w.; NW. 20, 1 s., 1 w.; SE. 2, 12 n., 4 w.; SW. 11, 4 n., 4 w.; SW. 28, 3 s., 4 w.; NE. 11, 11 n., 4 w.; also share No. one to

Catharine M. Temple, containing the following lands, to wit: NW. 12, 2 s., 5 w.; SE. 24, 5 n., 3 e.; SE. 5, 12 n., 8 e.; NW. 21, 7 n., 7 e.; SW. 23, 1 n., 2 w.; NE. 20, 1 n., 8 w.; SE. 8, 7 n., 6 w.; SW. 35, 14 n., 4 w.; NW. 20, 5 s., 3 w; SE. 4, 12 n., 7 e.; NW. 1, 9 s., 3 w.; NE. 28, 9 n., 2 e.; SW. 8, 4 n., 2 w.; NE. 22, 7 s., 5 w.; NW. 22, 8 n., 1 w.; also share No. five to Howard James, containing the following lands, to wit: NW. 22, 3 s., 5 w.; SE. 8, 5 n., 6 w.; SW. 9, 7 n., 1 w.; NW. 33, 10 n., 7 e.; SE. 26, 4 s., 6 w.; SW.
46 36, 9 n., 1 w.; SE. 18, 10 s., 2 w.; NE. 33, 7 n., 1 w.; NE. 23, 7 s., 3 w.; SW. 13, 3 n., 2 w.; SW. 2, 10 n., 1 w.; NE. 28, 7 n., 4 e.; SE. 1, 15 n., 4 w.; NW. 36, 7 n., 2 w.; NW. 23, 7 s., 3 w.; SW. 3, 13 n., 7 e.; also share number eight to Mary Ann King, containing the following lands, to wit: SE. 5, 3 s., 7 w.; SW. 8, 5 n., 6 w.; NW. 11, 14 n., 4 w.; SE. 19, 11 n., 8 e.; SE. 28, 3 n., 2 w.; SW. 2, 12 n, 4 w.; NE. 17, 2 n., 7 w.; NW. 14, 7 n., 6 w.; NW. 34, 4 n., 2 e.; SW. 30, 10 n., 4 e.; SE. 8, 4 n., 2 w.; SW. 20, 6 s., 5 w.; SE. 11, 13 n., 5 e.; NE. 6, 5 n., 2 w.; SE. 12, 7 s., 6 w.; NW. 36, 11 n., 4 w.; NW. 33, 9 n., 3 e.; also one equal half of the share number second to Lydia L. Mason, containing the following lands, to wit: NE. 34, 6 n., 4 e.; NE. 30, 11 n., 7 e.; SE. 29, 5 n., 1 w.; SW. 27, 13 n., 8 e.; SE. 20, 5 s., 6 w.; SE. 21, 12 n., 1 e.; SE. 19, 13 n., 6 e.; SE. 36, 4 s., 5 w.; also share number ten to Ellen King Van Buren, containing the following lands, to wit: NW. 26, 2 n., 8 w.; SE. 15, 9 n., 6 w.; NW. 8, 9 n., 4 w.; SW. 8, 3 s., 4 w; NE. 17, 3 n., 2 w.; NE. 9, 12 n., 1 w.; NW. 20, 10 s., 2 w.; NW. 23, 3 n., 7 w.; SW. 10, 7 n., 2 w.; SE. 28, 3 s., 4 w.; NE. 26, 9 n., 1 w.; NW. 12, 11 n.,
47 3 w.; SW. 5, 7 n., 1 e; NW. 22, 7 n., 3 w.; NW. 6, 6 n., 6 e.; SE. 33, 6 s., 4 w.; NE. 33, 9 n., 1 w.; also one equal half of the share number second to Robert W. James, containing the following lands, to wit: NW. 20, 1 n., 8 w.; NE. 10, 4 n., 1 w.; NE. 35, 3 n., 7 w.; NE. 4, 2 n., 1 e.; SW. 33, 13 n., 3 w.; SE. 34, 8 n, 4 w.

As Lydia L. Mason's share amounts in value to five dollars more than Robert W. James's share, we do report that the said Lydia L. Mason pay to the said Robert W. James five dollars, out of her share, as share number eleven amounts to thirty dollars more than the other shares. We do report that John B. James pay out of said eleventh share, two dollars and seventy-two cents to each of the other shares. We do report, that at the suggestion of the counsel for the parties in their suit, we exclude from the division the southeast quarter of section three, six south, three west, in Pike county, the title to this piece being in controversy. We, however, value the price of land last mentioned at one thousand dollars.

All of which allotments and divisions we deem fair and equitable, and having fully complied the requisitions contained in the order of this honorable court, we ask to be discharged; all of which is respectfully sub-
48 mitted by your commissioners.

P. K. STRINGHAM. [SEAL]
S. R. GRAY. [SEAL.]
GEORGE K. WATSON. [SEAL]

Pike county, Illinois, November 26th, A. D. 1844.

And it is suggested to the court now here, by the counsel for the complainants, and satisfactorily appears, by due proof produced by him, that by a decree of the court of chancery of the State of New York, made by the assistant vice-chancellor of the first circuit, on the sixth day of May, 1844, and a further decree made by the said court on the 20th day of June, 1844, in a cause pending in said court, in which the said Robert E. Temple was complainant, and the said Gideon Hawley, trustee as aforesaid, and the said Catharine Margaret, wife of the said Robert E. Temple, and the issue of the marriage of the said Robert and Catharine, were defendants, the said court

having jurisdiction in the premises, and copies of which decrees are here produced, that the trust deed, made in contemplation of the marriage between the said Robert E. Temple and Catharine Margaret, his wife, bearing date the eleventh day of June, in the year of our Lord one thousand
49 eight hundred and thirty-nine, and referred to in the bill of complaint in this cause, was set aside as to the real estate therein mentioned, on the execution of a proper deed of settlement of the real estate of said Catharine Margaret, which she had on the fourth day of June, 1839, or at any time since which new deed of settlement was subsequently executed in due form, under the direction and with the approval of said court, and under the said decree of the 20th day of June, 1844, deed, by way of further assurance, and in confirmation thereof were also executed as required by said decree, copies of which several deeds are now produced to this court, by means whereof the said trust deed, bearing date the eleventh day of June, 1839, was set aside and vacated, as to the real estate therein described; and it also appearing that the interest of the said Catharine Margaret Temple in and to the real estate in Illinois, of which partition is sought in this cause, are not included in or conveyed by the new trust deed so executed under the decree of the court of chancery as aforesaid, and that the said Catharine Margaret Temple therefore stands seized in fee, in her own right, of
50 one-eleventh part of the lands and real estate, of which partition is sought in this cause, and is entitled absolutely to the share of the lands allotted to her in and by the aforesaid report of the said commissioners, it is, therefore, ordered and decreed that the said share be allotted and assigned to her accordingly, and that the said Gideon Hawley, as trustee under the said deed, bearing date the eleventh day of June, 1839, be, and he is hereby discharged from all liability and responsibility under the same as to the said real estate, so allotted and assigned to the said Catharine Margaret. And it is further suggested to the court now here, and satisfactorily appears, that the defendant, Mary Ann King, on the eighteenth day of September, 1844, intermarried with Mintourn Post, of the city of New York, in the State of New York, and is now his wife. It is, therefore, ordered that the said Mintourn Post be made a defendant to this suit, and that the same proceed against him and his said wife, by the names of Mintourn Post and Mary Ann, his wife, late Mary Ann King. And it is further suggested to the court now here, and satisfactorily appears, that the
51 defendants, Henry Mason and Lydia L., his wife, by indenture, bearing date the first day of October, 1844, a copy of which is now produced, granted, sold, and conveyed all their right and interest, and the right and interest of the said Lydia, being the one twenty-second part of, in, and to the premises, of which partition is sought in this cause, to the defendant, Augustus James. It is, therefore, ordered that the portion of said premises which fell to the share of the said Lydia L. Mason, on the division thereof by the said commissioners, as appears by their report, be assigned and allotted to the said Augustus James. And it is also ordered that the said complainants be at liberty at any time hereafter, *nunc pro tunc*, if advised that the same is necessary, to file a supplemental bill in due form, settling the new matters now entered upon the record as aforesaid, or to place any other or further evidence of the same on file; and the said report of the commissioners being read and examined by the court, and due deliberation being had upon the same and the several matters aforesaid, it is now ordered and decreed, and this court, by virtue of the authority therein vested,
52 doth order and decree, that the said report be, and the same is hereby, confirmed, except so far as the same is affected by the matters above suggested on record. And it is further ordered, adjudged, and decreed, that Catharine James, widow of William James, deceased, having, previously to

the commencement of this suit, fully relinquished all of her right of dower in all the said lands and tenements and premises described in the complainants' bill herein filed, be and is hereby forever barred of and from all right of dower in the same; it is further ordered and adjudged by the court, and hereby entered of record, that in accordance with said report, John B. James receive, take, and hold in severalty the following shares allotted to him by the commissioners, to wit: shares numbers three, four, six, seven, nine, and eleven, and all the lands in these shares so allotted to him contained. It is further ordered and adjudged by the court, and hereby entered of record, that Catharine M. Temple receive, take, and hold in severalty, share number one, allotted to her by the commissioners, and all the lands therein contained. And it is further ordered and adjudged by the court, and is hereby entered of record, that Howard James receive,
53 take, and hold in severalty share number five, allotted to him by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record, that Mary Ann Post (late Mary Ann King, wife of Mintourn Post) receive, take, and hold in severalty share number eight, allotted to her by the commissioners, and all the lands therein contained.

It is further ordered and adjudged by the court, and is hereby entered of record, that Ellen King Van Buren, wife of Smith T. Van Buren, receive, take, and hold in severalty share number ten, allotted to her by the commissioners, and all the lands therein contained.

It is further ordered and adjudged by the court, and is hereby entered of record, that Augustus James receive, take, and hold in severalty the one equal half of share number two, as divided and allotted to Lydia L. Mason by the commissioners, and transferred to the said Augustus James by deed as above mentioned, and all the lands contained in this half of lot number two.

It is further ordered and adjudged by the court, and is hereby entered of record, that Robert W. James receive, take, and hold in severalty the
54 other one equal half of share number two, as assigned to him by the commissioners, and all the lands contained in the half of lot number two.

It is further ordered and adjudged by the court, that as Augustus James's half share of said share number two, so allotted to him as aforesaid, amounts in value to ten dollars more than the half share assigned to said Robert W. James, the said Augustus James pay to said Robert W. James five dollars for equality of partition; and that as share number eleven amounts to thirty dollars more than each of the other shares, that said John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the other shares.

It is further ordered, adjudged and decreed by the court, and the same is hereby entered of record, that the assignments, allotments and partitions made by the commissioners, as reported by them, between the parties and as above modified, be and they are hereby ratified and confirmed, and that all the parties herein shall be bound and concluded by the same, and that the estate assigned and allotted to each shall be held in severalty ac-
55 cording to the division made of the same, each respectively to hold the estate assigned and allotted to him or her in manner aforesaid, in fee simple, and in lieu of all the respective rights and interests which they, respectively, immediately to this partition, enjoyed in common in all the said lands and premises.

It is further ordered and adjudged by the court, that the parties to whom the said allotments have been made pay the costs, charges and expenses of this suit, in the following proportions, to wit: That said John B. James

pay the six-eleventh parts thereof; that Catharine M. Temple pay one-eleventh part thereof; that Howard James pay one-eleventh part thereof; that Mary Ann Post (late Mary Ann King) pay one-eleventh part thereof; that Ellen King Van Buren pay one-eleventh part thereof; that Augustus James pay one-twenty-second part thereof; and that Robert W. James pay one-twenty-second part of all the costs, expenses and charges of this suit. And it appearing, from the report of *of* the said commissioners, that the SE. quarter of section three, six south, three west, in Pike county, was excluded
56 by them from said division, the title being in controversy, it is now ordered that said suit be continued in court, as to the said parcel of land so excluded, until the title thereto shall have been finally determined so as to enable any party interested at any time hereafter, if necessary, to apply for a partition or division of said premises, or a sale thereof, as may be most beneficial to all the parties concerned.

STATE OF ILLINOIS, *County of Pike:*

I, George W. Jones, clerk of the circuit court within and for said county, certify that the foregoing and the attached 34 pages contain a complete and correct copy of the proceedings, decrees, reports, &c., in the case of John B. James *et al. vs.* Catharine James *et al.*, as fully as the same appears of record in my office, and that the same are duly recorded in volume 1 of chancery record, pages 179 to 182, 195, 227, 263 to 268, 317, 320 to 327.

Given under my hand and the seal of said court at my office, in Pittsfield, this 12th day of October, A. D. 1861.

57 [SEAL.] GEO. W. JONES, *Clerk.*

To the reading of which the defendant, by his attorneys, then and there objected, because the said exemplification does not purport to be an exemplification of the whole record, and because said record does not show a petition or the original bill for partition, and because said record does not show that the said court had any jurisdiction, and because it nowhere appears that the parties were properly or legally brought into court, and because it appears that said suit had been discontinued before the decree was entered, and because the bill for partition was not filed or suit brought in the county in which the greatest amount of lands lay, as required by the statute of Illinois, and because said judgment or decree was void, and because said decree was entered in vacation and not in term time, and because publication was made in Morgan county and not in the county where suit was brought, as required by the statute of Illinois, and because said exemplification was only a part of the record and not the whole
58 record in said case, and because exemplification does not show that the original bill, or a copy of the same, could not be produced, and because there was no evidence offered by said plaintiff showing that said original bill could not be produced in court in this case; all of which objections were then and overruled by the court, and said exemplification was then and read in evidence to the said jury To the reading of which and to the overruling of which, by said court, the defendants then and there excepted by his attorneys.

Be it further remembered, that on the same trial the plaintiff, further to maintain the issues on his part, offered to read in evidence to the jury a deposition of Gideon Hawley, in the words and figures following:

And the said Gideon Hawley, being about the age of seventy-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify and say as follows, viz:

59 My name is Gideon Hawley; I was seventy-six years old in September last; I am a counsellor-at-law; retired from active business, and reside in the city of Albany, in the State of New York; I was intimately acquainted with William James, late of the city of Albany and State of New York; he died in the said city of Albany, on the nineteenth day of December, 1832; I attended his funeral; the said William James left nine children surviving him, namely: William James, Augustus James, Henry James, Jeanette James, John B. James, Edward James, Catherine James, Ellen H. James, and Howard James. All of the said above named children were living in and during the year A. D. 1845, except Jeanette, who died on the eighth day of May, A D. 1842. The said Jeanette James was married to William H. Barker, and left surviving her the following named children, viz: Elizabeth Barker, Robert Barker, and Augustus Barker, and all of them are now living. That the children of the said William James, deceased, who died prior to his decease, were, (as appears from entries in his family Bible, and which this deponent believes to be correct and true,) John James,
60 born July 4th, 1805, and who died June, 1806; Henry James, born April 3d, 1809, and died June, 1809; Robert James, who died July 5, 1821; and Ellen James, who died April 19, 1823. That none of said four last named and deceased children left surviving them any child or children, or the descendants of any child or children, except the said Robert James, and the said Ellen James; that the said Robert James left two children him surviving, and named Robert W. James and Lydia James; both of them are still living; that the said Ellen James, deceased, (a daughter of the said William James,) was in her lifetime married to James King, esq., late of the city of Albany, deceased; she died April 19, 1823, and left her surviving and only child, named Mary Ann King, who was married to Minturn Post, of the city of New York, September 18th, 1844; that John B. James, a son of the said William James, deceased, died in the city of Chicago, Illinois, on or about the twenty-second day of May, A. D. 1856; he died testate, as I am informed and believe, leaving him surviving two children, viz: John V. James and Mary Helen James. The said John V. James died in the city of New
61 York in July, A. D. 1858.

GIDEON HAWLEY.

Taken, subscribed and sworn to before me this 20 day of January, A. D. 1862, at the city of Albany, N. Y.

R. J. HILTON,

United States Commissioner for Northern District of New York, 2 circuit.

To the reading of which the defendants offered the following objections, that that part of it which refers to the contents of the family Bible is itself the best evidence, and so much of said deposition as is on information and belief is incompetent, each and all of which objections were then and there overruled by the court, and said deposition read in evidence to said jury. To the reading of which deposition, and to the overruling of which, the defendants then and there, by their attorneys, excepted.

Be it further remembered, that on the trial of said cause the plaintiff, further to maintain the issues on his part, offered to read in evidence to the jury a copy from the record of the county court of the county of Adams and State of Illinois, which reads as follows, to wit:

62 27TH AUGUST, 1857.

STATE OF ILLINOIS, *Adams County Court, ss:*

March term, A. D. 1857.

In the matter of the last will and testament of John B. James, late of the city of Albany, in the State of New York, deceased. Now on this day comes

James Dexter, esquire, of the said city of Albany, trustee and executor of the said last will and testament of the said John B. James, deceased, by his attorneys, Jonas & Asbury, and present here to the court a duly authenticated copy of said last will and of the letters testamentary granted therein, which said copy of said will and of said letters testamentary are authenticated by J. A. McKown, surrogate of the county of Albany, in said State of New York, in due form of law and under the seal of the surrogate's court of said county of Albany, in said State of New York aforesaid; and it also appearing that said will was executed and admitted to record, according to the laws and usages of the said State of New York, and said letters thereon also granted in pursuance of the law of said State of New York; and it also appearing to the court that a portion of the property of which the said testator died seized is situated in the county of Adams, and State of Illinois; and the said trustee or executor having filed in this court a good and
63 sufficient bond, with approved security, under "An act in relation to conveyances of real estate by non-resident executors:" It is now ordered and adjudged, that said copy of said bill, letters testamentary, or of executorship, together with the accompanying proofs and certificates, be recorded in this court, and the clerk is hereby directed to record the same.

March 25th, 1857.

WM. H. CATHER, *County Judge.*

I, John B. James, of the city of Albany, in the State of New York, do make this my last will and testament. I give and devise all my estate, real and personal, whereof I may die seized and possessed, to James Dexter, esquire, of the city of Albany, to have and to hold the same to himself, for the uses and trusts following: In trust to pay all my funeral expenses and debts not secured by liens upon my estate, but justly due by me, out of the income of said estate, as soon after my decease and burial as may be. Secondly, to arrange for the final payment of such debts as shall exist at the time of my death, and for which mortgages or other liens upon my property, real or personal, shall be found, in the manner following, to wit: An inventory of my estate shall be taken by my said trustee, and such parts thereof
64 as are unproductive of income shall be sold and the proceeds invested in good securities or real estate, according to the best judgment of my said trustee. He shall then set aside from the income of said estate enough to yield annually the full interest upon the debt, with one thousand dollars per annum in addition to such amount of interest, to be applied to the liquidation of the debt. The balance of the income of my estate, after paying the expenses chargeable upon the management of the estate, shall be equally divided annually between my two children, viz: John V. James and Mary Helen James, and applied by my said trustee to their use during the life of the said John V. James and Mary Helen James. If either of my said children shall die without lawful issue, then the survivor shall receive the whole of such income as is directed to be divided between them. But in case of the death of the said John V. James and Mary Helen James without lawful issue, I give, devise and bequeath my estate to the children of my deceased sister, Catherine M. Temple. In case of the death of the said John V. James, or Mary Helen James, leaving lawful issue, I give and devise my estate to such issue, the issue of each party to receive one-
65 half of such estate. If one of my children shall die without lawful issue, and the survivor of my said children should have lawful issue, then to each issue, at the death of said survivor, I give and bequeath my estate.

JOHN B. JAMES.

The above instrument was dated the 23d day of July, 1855, subscribed by the above-named John B. James in our presence, who, at his request and in his presence, and the presence of each other, then subscribed our names as witnesses thereto, the said John B. James at the time declaring the same to be his last will and testament.

H. Q. LANSING, *of the city of Albany.*
J. M. LOVETT, *of the city of Albany.*

COUNTY OF ALBANY, *ss:*

Henry Q. Lansing and Joseph M. Lovett, of the city and county of Albany, being duly sworn in open court, do depose and say, and each for himself deposeth and saith, that he is a subscribing witness to the instrument now shown to him, purporting to be the last will and testament of John B. James, of the city of Albany, in the county of Albany; that the said John B. James did, in the presence of this deponent, subscribe his name at the end of the instrument, which is now shown and exhibited to this deponent as aforesaid, and which purports to be the last will and testament of the said John B.
66 James, which bears date on the 23d day *day* of July, in the year of our Lord one thousand eight hundred and fifty-five. And this deponent further saith, that the said John B. James, the said testator, did, at the same time of subscribing his name as aforesaid at the end of the said will, declare the said instrument so subscribed and now exhibited to be his last will and testament; and this deponent did thereupon subscribe his name at the end of the said will as an attesting witness thereto, and at the request of the said testator. And this deponent further saith, that at the said time when the said testator subscribed his name to the said last will as aforesaid, and at the time of the deponent's subscribing his name as an attesting witness thereto as aforesaid, the said John B. James was of sound mind and memory, of full age to execute a will, and was not under any restraint, to the knowledge, information, or belief of this deponent. And further these deponents say not.

H. Q. LANSING.
J. M. LOVETT.

Sworn and subscribed this 27th day of May, 1856, before me.
J. A. McKOWN, *Surrogate.*

67 ALBANY COUNTY, *Surrogate Court, ss:*

I, J. A. McKown, surrogate of the county of Albany, do hereby certify the foregoing to be a true copy and record of the last will and testament of John B. James, late of the city and county of Albany, deceased, propounded for probate and proved before me, as a will relating to both real and personal estate, and the proofs and examination taken in relation thereto.

J. A. McKOWN, *Surrogate.*

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, send greeting:

Know ye, that at the city of Albany, in the county of Albany, on the 27th day of May, in the year of our Lord one thousand eight hundred and fifty-six, before J. A. McKown, surrogate of our said county, the last will and testament of John B. James, deceased, (a copy whereof is hereunto annexed,) was proved, and is now approved and allowed of by us, and the said deceased having, whilst he lived and at the time of his death, goods, chattels, or credits within the State, by means whereof the proving and

registering the said will, and granting administration of all and sin-
68 gular the said goods and chattels and credits, and also the auditing, allowing, and final discharging the account thereof, doth belong unto us, the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will, is granted unto James Dexter, executor or trustee in the said will named, he having first taken and subscribed an oath before the said surrogate, faithfully and honestly to discharge the duties of such executor or trustee, hereby requiring you, the said James Dexter, to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which have or shall come to your hands, possession, or knowledge, as also to make, or cause to be made, duplicates of such inventory, and cause the same to be signed by the appraisers, and the same so made and signed, that you make return thereof to the surrogate of said county, within three months from the date hereof.

In testimony whereof, we have caused the seal of office of our said surrogate to be hereunto affixed. Witness J A. McKown, esquire, surrogate of the said county, at the city of Albany, in the said county, on the 31st day of May, in the year of our Lord one thousand eight hundred and fifty-six.

J. A. McKOWN, *Surrogate.*

69 STATE OF NEW YORK,
County of Albany, Surrogate's Office, ss:

I, J. A. McKown, surrogate of said county and clerk of the surrogate's court, do hereby certify, that I have compared the foregoing copies of the record of the last will and testament, and the proofs therewith, of John B. James, late of the city and county of Albany, deceased, and also the letters testamentary granted thereon, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of said original record; and I further certify, that said will is executed and proved and admitted to record, according to the laws and usages of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, this twenty-first day of November, in the year one thousand eight hundred and fifty-six.

[SEAL] J. A. McKOWN, *Surrogate.*

STATE OF NEW YORK,
County of Albany, Surrogate's Court, ss:

I, J. A. McKown, surrogate of said county, and presiding magistrate of the surrogate court, do hereby certify that the foregoing exemplifica-
70 tion of the record of the last will and testament, and the proofs therewith, with John B. James, late of the city and county of Albany, deceased, and also of the letters testamentary granted therein, is authenticated in due form.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court, this twenty-first day of November, in the year one thousand eight hundred and fifty-six.

[SEAL.] J. A. McKOWN, *Surrogate.*

STATE OF ILLINOIS, *Adams County, ss:*

I, William H. Cather, county judge of the county of Adams and State of Illinois, do hereby certify that the within and foregoing will of John B. James, late of the city of Albany, in the State of New York, deceased, is duly authenticated under the provisions of "An act in relation to convey-

ances of real estate by non-resident executors;" that the bond required by said act has been filed; that the accompanying letters testamentary have been granted, in pursuance of the laws of the State of New York, as appears from the certificates thereto attached; and that the foregoing will and letters testamentary, together with the accompanying certificates, are enti-
71 tled to be recorded in this court.

Given under my hand and seal, this 25th day of March, A. D. 1857.

WM. H. CATHER, [SEAL.]
County Judge.

STATE OF ILLINOIS, *Peoria County, ss:*

I, Enoch P. Sloan, clerk of the circuit court, and ex-officio recorder in and for said county, do certify that the foregoing is a correct, full, and true copy of authenticated copy of the last will and testament of John B. James, deceased, as the same appears by the records of my office, in book "U A," pages 574, 575, 576, and 577.

Witness my hand and seal of the said circuit court, this 15th day of January, A. D. 1862.

[SEAL.]

ENOCH P. SLOAN,
Clerk and Recorder,
Pr. J. NEWTON, *D'p'ty.*

To the reading of which the defendant, by his attorneys, then and there objected, to the introduction of said paper or exemplification as evidence, because it was a copy of a copy, and because said exemplification of the record of Adams county court could not be read to prove the last will and testament of said John B. James; that to prove the execution of the
72 will the exemplification of the probate of the of a will cannot be used; and also a will devising real estate must be proved as though not admitted to probate; and also because no proof of the execution of the will by said John B. James had been made; and also because, if the probate of the will is admissible to prove its execution by the testator, a copy of the will filed in Adams county court is not such a probate as will prove the same; and also because the statute of Illinois nowhere makes a copy filed in a county court, of a will offered to probate and proved in another State, proof or admissible evidence; but no objection was made because the same was a certified copy from the office of the clerk of the circuit court of Peoria county, instead of the county court of Adams county; all of which objections the court overruled, and the court decided that the exemplification offered was sufficient, and fully proved the will of said John B. James, and that the probate of the same in the State of New York, as well as the filing of the same in Adams county, and no other proof, was necessary for a party claiming title under said will to recover; and said exemplification was then
73 and there read in evidence, to the reading of which, and to the overruling of said objections by the court, the defendant then and there excepted.

Be it further remembered, that the plaintiff, further to maintain the issues on his part, offered to read in evidence to the jury, on the trial of the same cause, a deed from James Dexter, executor of the last will and testament of John B. James, deceased, to Robert Holloway and Henry M. Boggess, for the above-described tract of land, bearing date on the 16th day of May, A. D. 1857.

To all to whom these presents shall come:

James Dexter, of the city of Albany, in the State of New York, executor of and trustee under the last will and testament of John B. James, late of the city of Albany, in the State of New York, deceased, sends greeting:

Whereas the said John B. James, by his last will and testament, proved and allowed at a probate court held for the city of Albany, in and for the county of Albany, in the State of New York, on the 27th day of May, A. D. 1856, did authorize and empower his said executor and trustee to sell such portions of his estate as are unproductive of income; and whereas
74 the said James Dexter has complied with the conditions of an act of the general assembly of the State of Illinois, entitled "An act in relation to conveyances of real estate by non-resident executors," approved February 8, 1853, by causing a copy of said last will and testament, and of his letters testamentary granted thereon, to be recorded in the probate court of the county of Adams, in the State of Illinois, and by entering into bonds, with security, as required by said act: Now, therefore, know ye that I, James Dexter, executor and trustee as aforesaid, by virtue of the authority to me given by the said John B. James in said last will and testament, and in consideration of the sum of two thousand dollars to me paid by Robert Holloway and Henry M. Boggess, of the county of Warren, in the State of Illinois, the receipt whereof I do hereby acknowledge, do by these presents grant, bargain, sell, and convey unto the said Robert Holloway and Henry M. Boggess, their heirs and assigns, all that certain tract of land situated in the county of Warren, in the State of Illinois, and described as the south-east quarter of section thirty-four, (34,) in township ten (10) north,
75 range three (3) west, of the fourth principal meridian, containing one hundred and sixty acres, more or less: to have and to hold the aforegranted premises, with all the appurtenances thereunto belonging, and with all the estate, interest, or property therein of which the said John B. James died seized unto the said Robert Holloway and Henry M. Boggess, their heirs and assigns, to their only use and behoof, forever.

In witness whereof, I, the said James Dexter, in my capacity as executor and trustee of John B. James, have hereunto set my hand and seal, this sixteenth day of May, A. D. 1857.

JAMES DEXTER, [SEAL.]
Ex'c'r and Trustee.

Sealed and delivered in presence of—
H. N. WICKES,
JOS. A. KERNAN.

STATE OF NEW YORK, *City and County of Albany, ss:*

I certify that on this eighteenth day of May, 1857, before me, the undersigned, a commissioner of deeds in and for said city, appeared James Dexter, of the city of Albany, executor of and trustee under the last will and testament of John B. James, late of the same place, deceased, to me
76 personally known to be the person described in and who executed and subscribed his name to the within deed, and acknowledged the same to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal at [SEAL.] Albany, the day and year above written.

H. N. WICKES,
Com'r of Deeds, Albany.

STATE OF NEW YORK, *City and County of Albany, ss:*

CLERK'S OFFICE.

I, Robert Babcock, clerk of the said city and county, and of the supreme court, a court of record therein, do hereby certify that Henry N. Wickes, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument in writing and endorsed thereon, was at the time of

taking such proof or acknowledgment a commissioner of deeds in and for the city aforesaid, dwelling in the said city, and duly authorized to take the same; that I am well acquainted with the handwriting of the said commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

77 In testimony whereof I have hereunto set my hand and affixed my official seal this 18th day of May, 1857.

[SEAL.]

R. BABCOCK, *Clerk.*

No. 22724.

STATE OF ILLINOIS, *Warren County:*

CIRCUIT CLERK'S OFFICE.

I, William Lafferty, clerk of the circuit court in and for the county of Warren and State of Illinois, and ex-officio recorder of deeds in said county, do hereby certify that the annexed instrument of writing was filed for record in my office on the 15th day of December, A. D. 1859, at 8 o'clock p. m., and has been duly recorded, with the accompanying certificates, in vol. 31 of deeds, on page 500.

In witness whereof I have hereunto set my hand and the seal of said court at Monmouth, the day and year above written.

[SEAL.]

W. LAFERTY,
Clerk and Ex-officio Recorder.
By L. O. TOURTELLOTT,
Deputy.

Which was recorded on the 15th day of December, 1859. To the reading of which the defendant then and there, by his attorneys, objected; which objections were then and there overruled and said deed was permitted to

78 be read to the jury, to the which ruling of the court in overruling said objections and permitting said deed to be read, the defendant, by his attorneys, then and there excepted.

Be it further remembered, that on the trial of the same cause the plaintiff, further to maintain the issues on his part, offered to read in evidence to the jury a deed from Robert Holloway and Henry M. Boggess to Silas T. Green for the above described tract of land, dated the 19th day of December, A. D. 1859.

This indenture, made this nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, between Robert Holloway and Catharine Holloway, his wife, Henry M. Boggess and Jane B. Boggess, his wife, of Monmouth, Illinois, of the first part, and Silas T. Green, of Richmond, Ky., of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of five hundred dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by

79 these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, a certain tract or parcel of land known and described as follows, viz :

The southeast quarter of section thirty-four, (34,) township ten (10) north, of range three (3) west, of the fourth principal meridian, in Warren county, Illinois, together with all and singular the hereditaments, rights, privileges and appurtenances thereunto belonging or in anywise appertaining: to have and to hold the said premises as above described, with the appurtenances, to the said party of the second part, his heirs and assigns, forever.

And the said parties of the first part, for themselves and their heirs, executors and administrators, do hereby covenant to and with the said party of

the second part, his heirs, executors, administrators and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate, in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrance, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the
80 claims of all persons whomsoever they will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

ROBERT HOLLOWAY. [L. S.]
CATHARINE HOLLOWAY. [L. S.]
HENRY M. BOGGESS. [L. S.]
JANE B. BOGGESS. [L. S.]

Signed, sealed and delivered in presence of—

STATE OF ILLINOIS, *Warren County, ss:*

I, H. H. Boggess, a justice of the peace in and for said county, do certify that on this day personally appeared before me Robert Holloway, Catharine Holloway, Henry M. Boggess and Jane B. Boggess, whose names appear subscribed to the foregoing deed of conveyance as having executed the same, who are personally known to me to be the real persons who and in whose names the acknowledgment is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed; and Catharine Holloway and Jane B. Boggess, wives of the said Robert Holloway and Henry M. Boggess, having been by me made acquainted with the contents of said deeds, and by me exam-
81 ined separate and apart from their said husbands, whether they had executed the same and relinquished their dower to the lands and tenements therein mentioned, acknowledged that they had done so voluntarily and freely and without compulsion of their said husbands, and do not wish to retract.

Given under my hand and seal, at Monmouth, this 19th day of December, A. D. 1859.

H. H. BOGGESS, *J. P.* [SEAL.]

To the reading of which defendants then and there objected, because there was no evidence produced in court to show that "H. H. Boggess, J. P.," was authorized officer to take the acknowledgment of or proof deeds; no seal of the court certifying that said person was a justice of the peace, or any other officer authorized by law to take acknowledgment of deeds. Which objections were (the deed having been acknowledged in Warren county, where the lands lie) then and there overruled by the court and said deed permitted to be read in evidence, to the reading of which deed, to the overruling of which objections, the defendant then and there, by his attor-
82 neys, excepted. This was all the evidence offered by the plaintiff, who then rested.

Be it further remembered, that on trial of said cause the defendant, to maintain the issues on his part, offered to read to the jury a certified copy of a deed from William James to Levi Beebe, bearing date the 13th day of October, A. D. 1819, for the land in question.

No. 38045. Filed Oct. 13, A. D. 1862, at 2 p. m.

Know all men by these presents, that I, William James, of the city and county and State of New York, for and in consideration of fifteen hundred

dollars, current money of the United States, to me truly paid, on and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, and confirm unto Levi Bebee, of Greenbush, Rensalear county, State of New York, his heirs and assigns, forever, the following tracts or parcels of land, lying and being in the Illinois military land district, which quantity of land is more
83 fully described by the following sections, numbers, and ranges :

The northeast qu'r of section thirty, eleven north, in range seven east; also, the northeast qu'r of section nine, twelve north, one west; also, the northwest quarter of section thirty-three, township nine north, range three east; also, the southwest qr. of section thirty, ten north, range four east; also, the northwest qr. of section twenty-two, seven north, range three west; also, the northwest qr. of section three, nine north, range four west; also the northeast qr. of section twenty-five, fifteen north, range six east; also the southwest qr. of section two, twelve north, range four west; also the northwest qr. of section thirteen, six north, range four west; also the northwest qr. of section five, seven north, range one east; also the northeast qr. of section thirty-two, four north, range three west; also the southeast qr. of section twenty-four, five north, range three east; also the southwest qr. of section thirty-five, fourteen north, range four west; also the southeast qr. of section thirty-two north, range six west; also the northwest qr. of section thirty-three, ten north, in range seven east; also the northwest
84 qr. of section twenty-two, six north, range eight west; also the southeast qr. of section twenty-seven, five north, range one west; also the northeast qr. of section six, five north, range two west; also the southeast qr. of section twenty-seven, nine north, range four east; also the south half of section eight, four north, range two west; also the southeast qr. of section thirty-four, eight north, range three west; also the northwest quarter of section thirty-six, nine north, range four west; also the north half of section eleven, eleven north, range one west; also the southeast qr. of section four, four north, range two west; also the southeast qr. of section thirty-four, ten north, range three west; also the northeast qr. of section twenty-six, nine north, range three west; also the northeast qr. of section thirty-three, seven north, range one west; also the northeast qr. of section twenty-three, seven south, range three west; also the southeast qr. of section eight, seven north, range six west; also the south half of section eight, five north, range six west; also the north half of section eleven, fourteen
85 north, range four west; also the southeast qr. of section one, fifteen north, range four west; also the northwest qr. of section eight, seven north, range four west; also the southwest qr. of section eighteen, six north, range six west; also the south half of section two, twelve north, in range four west; also the southeast qr. of section nineteen, thirteen north, range six east; also the north half of section twelve, eleven north, range three west: to have and to hold the aforesaid described tracts of land, and every part and parcel thereof, with all the appurtenances and privileges thereunto belonging, to him, the said Levi Bebee, his heirs and assigns, for his or their own proper use, benefit, and behoof forever, and to and for no other use, benefit, interest, or purpose whatever.

And I, William James, for myself, my heirs, executors, and administrators, do covenant, promise, and agree to and with the said Levi Bebee, his heirs and assigns, that I am now the true, lawful, and rightful owner of all and singular the above-mentioned lands, and that he, the said Levi Be-
86 bee, his heirs and assigns, shall and may, at all times, forever hereafter, peaceably and quietly have, hold, occupy, possess, and enjoy all and singular the lands bargained, sold, transferred, and conveyed, without the lawful let, suit, trouble, hindrance, molestation, interruption, evic-

tion, or disturbance of the said William James, or my heirs or assigns, or any other person whatsoever; and that I and my heirs, and all and every person or persons, and his and their heirs, lawfully claiming any estate, right, title, or interest of, in, and to the lands herein described, by, from and under me, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the request and at the proper costs and charges in the law of the said Levi Bebee, his heirs and assigns, make, do, sign, seal, and execute, or cause or procure to be made, done, signed, sealed, and executed, all and every further and lawful act or acts, thing or things, device or devices, conveyance or conveyances, assurance or assurances in the law, whatever, for the further, better, and more perfect granting, conveying,
87 releasing, confirming, and assuring the premises aforesaid, unto the said Levi Bebee, his heirs and assigns, and to his and their proper use and behoof forever, according to the true intent and meaning of these presents, and to and for no other use, intent, or purpose whatever. And I do hereby authorize and irrevocably empower the said Levi Bebee, his heirs and assigns, to take possession of the aforesaid described tracts of land, either in my name, or his or their name or names, as may be deemed best calculated to secure him, the said Levi Bebee, and his heirs, forever, the peaceable enjoyment thereof.

In testimony of all the foregoing, I, the said William James, hereunto affix my hand and seal, at the city of Albany, State of New York, this thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen.

WILLIAM JAMES. [SEAL.]

Signed, sealed, and delivered in presence of—
JACOB DUNNING.

88 STATE OF NEW YORK, *Albany County, ss:*

Be it remembered, that on the thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, came before me William James, who is to me well known as party grantor of the within deed, and who in person acknowledged that he had signed, sealed, and delivered the same as his free act and deed, for the uses and purposes therein expressed.

[L. S.] ESTES HOWE, *Judge*
Albany County Com. Pleas Court, Judge ex-officio performing the duties of a Judge of Supreme Court at Chambers.

STATE OF ILLINOIS, *Knox County, ss:*

I, John H. Lewis, clerk of the circuit court and ex-officio recorder in and for the county and State aforesaid, do hereby certify that the foregoing deed of conveyance and certificate is a true and correct copy of a deed from W. James to Levi Bebee, as the same appears of record in my office in book 55, on pages 121, '2, '3.

In testimony whereof I have hereunto set my hand and affixed the
89 seal of said court, at Knoxville, this 14th day of May, A. D. 1863.

JOHN H. LEWIS, *Clk.*

{Five cent United States internal revenue stamp; cancelled.} [SEAL.]

Which deed was not recorded till October, 1862.

Here both parties rested, and no other or further evidence was given, or offered to be given, by either party, to the jury

Be it further remembered, that on the trial of said cause, thereupon the

defendant, by his attorneys, asked the court to instruct the jury that the plaintiff could not recover upon the evidence offered in this case, and also that the jury should render, from the evidence, a verdict for the defendant; which instructions the court refused to give. Thereupon the defendant also asked the court to instruct the jury, that the plaintiff had failed to show a title to the property in him; which instructions the court also refused to give; and also to instruct the jury that the law was for the defendant.

To the refusal to give these several instructions asked by the defendant, the defendant then and there excepted. Thereupon the jury afore-
90 said returned their verdict that the defendant was guilty, in manner and form as charged in plaintiff's declaration.

To all of which several rulings and decisions the defendant, in due time, excepted, and asked to have this his bill of exceptions signed, sealed, and made part of the record in this case; which is accordingly done.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed May 19th, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twenty-third day of November, A. D. 1863, came said defendant and filed his bond in said entitled cause; which said bond is in the words and figures following, to wit:

In error to the United States for the northern district of Illinois, July term, A. D. 1863.

MICHAEL SECRIST } Ejectment.
vs.
SILAS T. GREEN. }

Know all men by these presents, that I, John Lafferty, am held
91 and firmly bound unto the above-named plaintiff below, (defendant here,) to wit, the said Silas T. Green, in the sum of four hundred dollars, to be paid to the said Silas T. Green, and to his executors and administrators; to which payment well and truly to be made I bind myself, my executors and administrators, firmly by these presents. Sealed with my seal and dated this day of November, A. D. 1863.

Provided, however, and this obligation is upon this expressed condition, that whereas the above-named Michael Secrist has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by said circuit court of the United States in the above-entitled cause, in favor of said Silas T. Green:

Now, therefore, the conditions of this obligation is such, that if the above-named Michael Secrist shall prosecute his said writ of error to effect, and shall pay all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN LAFFERTY. [SEAL.]

92 Signed and sealed in presence of—
JOHN B. STRONG.
GEORGE BURNS.

{ Twenty cents United States internal revenue stamp; cancelled. } Approved.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 23d, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the seventh day of December, A. D. 1863, a writ of citation was filed in said clerk's office; which said writ, with the return thereon, is in the words and figures following, to wit:

United States of America to Silas T. Green, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of December, eighteen hundred and sixty-three, (1st Monday in December, A. D. 1863,) pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein Michael Secreast is plaintiff, and you are defend-
93 ant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness this sixteenth day of July, in the year of our Lord one thousand eight hundred and sixty-three, (16th July, A. D. 1863.)

THOMAS DRUMMOND, *U. S. Judge.*

I hereby accept service of the within citation, this 7th day of December, 1863.

W. C. GONDY,
Attorney for Silas T. Greene.

Endorsed: Filed Dec'b. 7, 1863.

WM. H. BRADLEY, *Clk.*

94 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true and complete transcript of the record and proceedings had in the cause wherein Michael Secrist was plaintiff, and Silas T. Greene defendant, as the same appears from the records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in Chicago, this 7th day of December, A. D.
[SEAL.] 1863, and of the independence of the United States the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

95 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America, to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court before you, between Silas T. Greene, plaintiff, and against Michael Secrist, defendant, a manifest error hath happened, to the great damage of the said Michael Secrist, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme
96 Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-first day of November, in the year of our

[SEAL.] Lord one thousand eight hundred and sixty-three, and of our independence the 88th year.

WM. H. BRADLEY, *Clerk*.

97 MICHAEL SECREST } In ejectment.
v.
SILAS T. GREEN. }

In error from the circuit court United States, northern district of Illinois.

Assignment of error.

And now comes the said Michael Secrist, and says that in the records and proceedings aforesaid there is manifest error, to wit:

1st. The court erred in permitting the deed from George Tibbitts to William James, dated 3d March, 1818, to be read in evidence to the jury.

2d. In permitting an exemplification, purporting to be a part of the record of the circuit court of the county of Pike, and State of Illinois, in partition, in which the land in question was a part, to be read to the jury without the whole record or a copy of the record, or some evidence shown why the whole record was not produced. No original bill or copy of bill for partition. No evidence in the record that the cause had jurisdiction. No evidence
98 of publication in Pike county.

3d. In permitting the deposition of Gideon Hawley to be read in evidence to the jury. 1. He states what the family Bible contains. 2. What he knows from information and belief.

4th. In permitting an exemplification of the records of Adams county court, in the State of Illinois, to prove the last will of John B. James, which was admitted to probate in the State of New York. A copy of the records of Adams or Peoria county is not sufficient evidence to prove the execution of the will of John B. James, made and admitted to *to* probate in the State of New York, when the will devises real estate according to the statutes of Illinois, with no further evidence to the jury.

5th. In permitting the deed from James Dexter to Robert Holloway and Henry M. Boggess, made 16 May, 1857, to be read to the jury.

6th. In permitting the deed from Henry M. Bogges to Silas T. Green to be read to the jury without sufficient proof of its execution, or an acknowledgment before a proper officer.

7. The court erred in refusing to instruct the jury that the law was
99 for defendants below, plaintiff in error in this court; and that the plaintiff below failed to show the title to the land in question to be in him.

The said verdict is manifestly against the evidence in the case.

3d. The judgment was given in favor of Silas T. Green, whereas by the law of the land it ought to have been given in favour of Michael Secrest.

Wherefore the said Michael Secrest prays that a citation and supersedeas may issue, and that the said judgment may be reversed, annulled, and held for nothing, and that he may be restored to all things he has lost by reason thereof.

JOHN M. GRIMES, *Attorney for Plaintiff in Error.*

100 And now comes the said Silas T. Greene, defendant in error, and says that there is no such error or errors in the proceedings, whereof the foregoing is a record, and this he prays may be inquired of by the court and the said judgment affirmed, &c.

W. C. GONDY, *Att'y for Def't in Error.*

Filed 11th December, 1863.

A BRIEF OF THE POINTS

RELIED UPON BY THE

PLAINTIFF IN ERROR,

In the Case of RICHARD SECREST vs. SILAS T. GREEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS. AT THE DECEMBER TERM OF THE SUPREME COURT OF THE UNITED STATES, A. D. 1865.

Defendent in error brought his action of ejectment to recover the S. E. quarter of Sect. No. 34, Town No. 10, N. Range No. 3, west of the 4 P. M., which land was in Warren county, Illinois, against the Plaintiff in error, who held said land in occupancy and possession.

It is admitted by both parties that George Tibbitt's was the Patentee of said land. Defendent in error to establish his title below offered to read in evidence a deed from George Tibbitt's to William James conveying this land in question on the 3rd of March, 1818. Recorded 21st September, 1818. (See Record page 5.) which deed was read in evidence, the Plaintiff in error objecting. The court erred in admitting this deed to be read in evidence. Because it was not proven or acknowledged according to law. By the laws of Illinois a Master in chancery could not take proof of or the acknowledgment of a deed; but by the act of 30th March, 1822, passed in Illinois, if this deed be proven or acknowledged according to the laws of New York of 1818, the proof would be sufficient.

This deed could not be offered in evidence in any court, in any county in the State of New York.

Because a Master in Chancery is a limited creature of the statute authorized to take proof of or the acknowledgment of deeds when the land lies in the county where the Master resides. Where he takes proof or acknowledges a deed where the land lies in a different county, his acts are void, unless the certificate of the clerk of the court is attached under seal. It then becomes the act of that court which is known by its seal every where in the Union.

The description in the deed as well as the return on the writ of ejectment, shows that the land lies in a different county in New York from that in

which the Master resided, to wit, in Warren county, Illinois. There being no certificate of authentication under the seal of the Court, the act of the Master was void.

The officer taking the proof of this deed does not show that he acted or was an officer in any county in the State of New York or Illinois. He shows merely "State of New York, ss." (See page 7, Record.)

The jurisdiction of the officer or Court must appear affirmatively on the record or deed.

3 Dall. R. 382. 8. Peters 158.

In the case of Vance vs. Schuyler, 1. Gil. 164, it is decided that in a case like this where there is no assignable locality, the act of the officer is void, and even where the seal is attached it will not cure the defect.

In the case of Choteau vs. Jones, et al., 11 Ills. 321, the Supreme Court decides that before a deed can be admitted to record in Illinois under the above act of 1822, there must be evidence that the deed was acknowledged according to the law of the State where the proof was taken.

It certainly appears clear that the execution of this deed was not proven or acknowledged according to the laws of Illinois or New York, and was, therefore, wrongfully admitted as evidence without such proof.

By the Act of 1822 it may be argued:

1st. That the State of Illinois is considered in the State of New York.

2d. That the United States Circuit Court is bound to know all the local officers in each county in each State, and is bound ex-officio to notice their acts without the certificate of authentication under the seal of said courts.

I make these statements so that the objections made by me may not be confounded with the above.

1st. A Court cannot confer jurisdiction on a local officer where the Legislature has refused or neglected to do it.

2d. If we were to admit that the State of Illinois is the State of New York, which is all the Legislature requires in the Act above of "'22."

The main question which rises here is not a question of States; but it is a question of the jurisdiction of counties. Not only the Legislatures of New York and Illinois, but the Legislatures of all the States join in adopting the general rule.

That when any local officer in any county who has no seal of office, shall do any official act, which is to operate on citizens of any other county than that in which he resides, and to take effect, then said act of said local officer without a seal, shall, before said act shall be recognized as a legal act, be authenticated by the certificate of the County Court, under the seal of said Court.

This local officer's act then becomes the act of the county, which is known by its seal and is noticed to every man in every State.

Whenever a local officer who has no seal attempts to act, the act to take effect on citizens of any other county where the officer does not reside, unac-

companied by the county seal and certificate, the act is certainly void, much more so where the land in reality lies in another State, and where the officer gives no assignable locality.

If the act were fraudulent and indictable, how could the officer be punished? He must be indicted in the county where the crime has been committed.

In what county could the indictment be found where he makes his locality? "State of New York, ss."

To reverse the above well established rules, and to hold such an act, an official act by which persons in different counties, in different States (as in this case a thousand miles distant,) should be bound, would be to open a door to frauds and forgeries, that would make every man's titles to his lands unsafe.

The officer of government dressed in citizen's clothes, who commands to be obeyed, must open his bosom and show his star.

This Master, your honors, refuses to show his star.

The intention of the Legislature was not that it should be sufficient that the United States Courts from their high position, should secretly know the officers of government.

But the intention of the law is that no citizen shall bound to recognize a citizen dressed in citizens' clothes, unless on his breast he wears his star of office.

If this position be correct, this ends the controversy, as Plaintiff in error holds the land in possession and by occupancy.

Should the Court rule otherwise, the Plaintiff in error, Defendent below claims title through a deed made by William James, to whom the above deed was made, which deed was executed and delivered to Levi Bebee, through whom Plaintiff in error claims, on the 13th October, 1819, but not recorded till 13th October, 1862. (See page 27, Record.)

The Defendant in error to establish his title, next offered in evidence an exemplification of part of the record of a case in partition in Pike county, in the Circuit Court in Illinois, in regard to the above land. (See page 7, Record.)

The Court erred in overruling Plaintiff in error's objections, and in permitting the exemplification of a part of the record to be read without the whole.

There cannot be a doubt but that the whole record would be the best evidence, A part of the record could not be offered, being secondary evidence, without showing that the whole record or best evidence could not be had.

In England the decree would be sufficient, because, says Hon. Story, all the proceedings are copied in the decree. But not so in America, for the whole record is before the Court.

It would be necessary to have the bill on which the decree was founded before the Court, so that the Court could judge that the decree responded to

the prayer of the bill. That part of the decree which did not respond to the bill would be void. The presumption of the law is that the petition on which this decree was founded, was not answered by the decree, and that it was suppressed.

In the 8 Martin's, (Louisiana Reports,) 381, in the case of Dismuskes vs. Musgrove, the Court says: The necessity of producing the whole record is founded on the idea *that the part* omitted contains something unfavorable to the party—that the contents must be gathered from the whole taken together.

The law is, the whole record must be produced: a part of the record is not the best evidence. See 13 Sergeant and Rawle, 131.

In the case of Ingham vs. Mason, 13, Sergeant and Rawle, 394, the Court says: Even convenience would not be served by relaxing the rule which requires the whole record to be *certified*, it being as easy to procure the whole as part, and were anything less than the whole to suffice, we can readily see what abuse would issue from selecting particular parts, and suppressing the rest. The Judge himself became convinced of the incompetency of the record, and directed the jury to disregard it. But such a direction was held in Shaeffer vs. Kreitzer, 6. Bin., 431, and Nash vs. Gilkerson, 5 Sergeant and Rawle, 352, insufficient to repair the consequence of the error.

It seems to be a well settled principle by the authorities, that a part of a record cannot be offered without the whole.

When we know that the Court permitted an exemplification of part of the record to it, the decree, without even compelling them to show cause why the bill—to which this decree responded, (if it did so respond,)—or a copy of said bill, could not be produced.

We must indulge in the idea that the Court erred in so ruling.

The jurisdiction of the Court over the Defendant must appear affirmatively on the record as we have before shown.

Suppose we admit everything set forth in the record, (page 18,) "that publication was made four weeks successively, (at Jacksonville, in Morgan county, a county outside of the military track, entirely beyond where any of these lands lay,) that a guardian *ad litem* was appointed and answered for the infants; that summons was issued pursuant to law and default taken.

All of this does not give the Court jurisdiction over the Defendants. Nothing can be presumed in favor of the jurisdiction of the Court, nor can the Court presume that service was correct.

The law demands that summons that the Court says was issued "according to law," *must be returned according to law*, to wit, "not found." Here again is another example of the fearful danger of suppressing a part of the record.

The law presumes that this summons, "which was issued according to law," was never served on the Defendants as required by law, nor was there any return on the summons which showed that the Defendant was beyond

the jurisdiction of the officer and could not be served. Dismusker vs. Musgrove, 8 Martin's Reports, 381.

This decree was void because it does not appear that the Court had jurisdiction over the Defendants, because it nowhere appears that the parties defendent were legally brought into Court, because said suit had been discontinued before said decree was entered; because the bill was not filed or suit brought in the county where the greatest number of lands lay as required by the laws of Illinois; because the decree was entered in vacation, and not in term time; because publication was made in Morgan county, and not where the suit was brought (and no cause shown why publication could not be made in the county where the bill was filed,) as required by the statute of Illinois; because said exemplification was only a part of the record and not the whole, and because there is no evidence to show that the original bill or a copy of it, could not be produced.

Defendants in error next read in evidence a deposition of Gideon Hawley. (see pages 18 and 19 of Record,) Plaintiffs in error objecting. Because a part of the deposition states the contents of the family bible.

Plaintiff in error believes the old family bible itself is about the best evidence, and that it should have been produced to talk for itself, for it would speak the whole truth.

The Court will please indulge me for a moment if I should vary from the record.

This suit is brought for the recovery of a one quarter section of land worth about $3,000. But the Court will see that this is sought to be made a precedent case, (see page 11 to 15, Record,) for between two and three hundred quarter sections, worth, say $900.000, where about three hundred families who have buffetted the pioneer's life, may, by this decision, (if affirmed,) be stripped of their homes.

We can safely indulge—nay, we know this Court will not grant such a precedent unless legally done.

We look with admiration on the English courts when they adjourned again and again to examine the smallest interests of an Englishman. Is not an American's right worth as much as an Englishman's? Is this Court not equal to the English Courts? The highest in America, eh! at this time probably the star of the world. It is true we reclined on the bosom of our Alma Mater across the briny deep and from thence drew our legal information.

But it is now equally true, that she tottering with age, leans upon the shoulder of brother Jonathan, and watches with interest his legal strides, as she watched with fearful interest the little Monitor while it poured its hot shot and shell into her favorite Merrimac.

Yes, a President of this Court, then, is to be greatly desired or fearfully dreaded.

Please pardon me for digressing.

The Defendent in Error next read, (Plaintiff in Error objecting,) in evidence an exemplification of the records of Illinois, copied from New York, of the last will of John B. James, (heir at law of William James, who has deeded to Plaintiff in Error) admitted to probate in New York, (see page 20, Record). By the Statute of Illinois which reads: "All original wills after probate thereof shall be recorded, and remain in the office of the proper county; and authenticated copies thereof certified under the hand and seal of said probate, justice, shall be admitted as evidence in any Court of Law or Equity in this State. Purples Stat. Jus. vol. 2 page 1194.

It is required not only that the will shall be recorded, but it shall remain there to be copied, and that a copy alone of that will shall be evidence and not a copy of the record.

There is no law in Illinois allowing a copy of the record of a will to be offered in evidence, even though it were copied from the records in the county in Illinois where the original will was recorded. The statute to hold the will sacred and prevent fraud, provides that only a copy from the original will shall be evidence.

Much less that a copy taken from the records of New York and recorded in Illinois, and then that a copy of that copy should be offered in evidence without proof of Probate in Illinois, where the lands lay in Illinois sought to be devised.

And that too, without showing that the original will could not be produced nor even a copy of it.

The Court erred in admitting this will; because it was not the best evidence, nor was it even secondary evidence, and no reason was shown why the original will or a copy of it could not be offered.

A copy of a copy of a will in Illinois cannot be offered in evidence in any case.

The exemplification is not proper proof of the execution of the will, so as to admit it to record in Illinois. Because the Record shows on its face (page 20 and 21,) not only the absolute necessity of following the Laws of Illinois, which require that a copy of the original alone is sufficient evidence, but it shows more. It shows that the record produced, by these copies of copies, is not the last will of John B. James. See what the witnesses say, page 21.

"The above instrument was dated the 23d day of July, 1855, subscribed by the above named John B. James, in our presence, who at his request and in his presence and in the presence of each other, then subscribed our names as witnesses thereto, the said John B. James at the time declaring the same to be his last will and testament."

The only way or marks that these witnesses knew this will was by the date. Now turn to page 20 and see what date, that copy of a copy, which the Court compels us to take as a true copy of the original will bears. None! none! no date at all. Then is this a copy of John B. James' will? or do the witnesses swear false?

Or does the fearful fact (which the Statute of Illinois guards against) flash on our minds, that the original will of John B. James, was dated as the witnesses swear, and that this certificate was torn from said will and pasted on this forged will which bears no date, compelling John B. James to devise lands which his father, William James, had sold before his death.

The Court certainly erred in permitting this, a copy of a copy of a copy, of the will of John B. James, to be read in evidence for the reasons shown.

Plaintiff in error insists:

1st. That the Court erred, (see page 29,) in refusing to instruct the jury that the Plaintiff could not recover from the evidence a verdict.

2d. That the Plaintiff had failed to show title to the land in question.

3d. That the law was for Defendant, before Plaintiff in error.

All of which points are respectfully submitted with all confidence, that the Court will decide right and that before the Court will order that Plaintiff in error shall give up his land and lifetime labor.

It will see that the demands of the defendant in error are at least legal if not equitable.

JOHN M. GRIMES,
Attorney for Plaintiff in Error.

Washington, D. C., Dec. 22nd, 1865.

P.S. The Statute under which the James Will was attempted to be probated in Ills. viz. Purples Stat. 1192 Sec. 5. passed 3 March 1845. (Stat 1845-234) was repealed (as to its operations) by act 12 July 1853 (Stat 1853 page 1 Purples Stat 1221 — 25. Sect. 1. which requires a will made out of Ills. shall be probated in Cook County as in Ills. The James Will was made 23 July 1855 (In Cook Co)